

Maryland. Constitutional Convention Commission.

Committee on Judiciary Department.

Reports, 1st - 8th (final).

C O N S T I T U T I O N A L C O N V E N T I O N C O M M I S S I O N

FIRST REPORT

OF THE

COMMITTEE ON JUDICIARY DEPARTMENT

February 14, 1966

RE: STRUCTURE OF THE COURT SYSTEM AND
JUDICIAL SELECTION, TENURE AND REMOVAL

The Committee on the Judiciary Department reports that it has reached the following tentative conclusions which, by a motion adopted at the Committee meeting of February 4, 1966, are expressions of present intent only and which can be reconsidered at any time prior to the filing of the Final Report of the Committee.

I. STRUCTURE OF THE COURT SYSTEM

1. The court system should be a structure of four levels, the highest court, the intermediate appellate court, the trial court of general jurisdiction and the trial court of limited jurisdiction.

COMMENT:

This proposal recognizes the necessity for an appellate court below the level of the highest court, because of the great increase in the caseload of the Court of Appeals. The creation by constitution of a court at this level is approved and urged by the Maryland State Bar Association.

2. All courts, except the highest court, should be divisible into geographic districts and also into divisions, based on the subject matter of the cases to be heard, as provided by law.

COMMENT:

This proposal is designed to achieve the most efficient operation of the court system by permitting flexibility and specialization based on the volume and type of cases, the areas of origin of the cases and the special talent and experience of particular judges. Substantially such a proposal is recommended by all recent studies and is incorporated in varying degrees in all recent state constitutions.

The expression "as provided by law," as used in the subject proposal, and as used throughout this First Report, should be read as meaning a provision either by act of the legislative branch or by a rule adopted by the highest court. The Committee has not yet resolved on tentative recommendations as to which, if any, of the features of the judicial system, relating to subject matter jurisdiction, geographic districting and number of judges at the various structural levels, should be determined by statute, or by rule of the highest court, as recommended by the A.B.A.

3. The Highest Court:

- a. It should be a statewide court.
- b. Composed of five judges.

COMMENT:

Because of the proposed creation of an intermediate appellate court, it is believed the composition of the highest court could be reduced from the seven judges as at present. No term of any present judge would be affected in the gradual transition. A five judge court would eliminate the present panel system and eliminate the problem of rearguments when there is a division of opinion in the panel initially hearing argument. The number should be fixed by constitution to prevent packing, as recommended by the A.B.A.

- c. There should be no geographical basis of selection for these judges.

COMMENT:

The Committee recognizes that law, both substantive and procedural, is not an exact science but that it is subject to certain local nuances. Some benefit in creating the decisional body of law of the state is obtained by having a geographic cross-section of representation on the court. However, the Committee believes that this will be accomplished, without a constitutional requirement, in the selection process. The

danger of the loss of judicial talent because of such a geographic restriction would seem to outweigh the possible benefits of such a restriction.

4. The Intermediate Appellate Court:

a. Jurisdiction of this court would be appellate only, as provided by law, but the court would be empowered to act in aid of its appellate jurisdiction.

COMMENT:

The jurisdiction of this court should not be defined constitutionally, in order to retain the maximum flexibility in adjusting to appellate caseloads. Thus it could hear civil and/or criminal cases. Whether, and the extent to which, there could be a further review by the highest court, would be as determined by law. The constitution should also be broad enough to permit by law, the taking of testimony, in aid of appellate decision, without remand, and to permit the conferral on the court of the power to review and revise sentences in criminal cases. However, unlike the Maryland State Bar Association proposal, there would be no constitutional conferral of jurisdiction of any type on the court.

b. The court would originally be composed of five judges, without residence requirement, but the number of judges could be increased by law and residence requirements imposed by law.

COMMENT:

While the court should be created by constitution, flexibility with respect to the growth of the court should be permitted without the necessity of constitutional amendment. Under proposal 2, supra, geographic districts and subject matter divisions of the court could be created by law. At such time a residence requirement could be provided by law concerning the selection of judges.

5. The Trial Court of General Jurisdiction:

a. There should be a single statewide trial court of original jurisdiction.

COMMENT:

The Committee proposes a unified trial court of general jurisdiction. Thus, all trial judges would be judges of the

same court and the total volume of judicial business could be allocated to such judges as are available and are best qualified to cope with particular types of cases. One result of the proposal would be the consolidation of the courts of Baltimore City into the unified court.

b. General jurisdiction would include all original jurisdiction, except as conferred by law on the court of limited jurisdiction, and such appellate jurisdiction as may be conferred by law.

COMMENT:

The appellate jurisdiction would be appeals from the court of limited jurisdiction and appeals from such administrative agencies, if any, as provided by law.

c. There should be no residence requirement on the selection of judges specified in the constitution, but such requirement, if any, should be as provided by law.

COMMENT:

Under proposal 2, geographic districts of this court could be created by law. It is anticipated that the initial districts would follow county lines and that there would be a requirement by law that one or more of the judges reside, or have maintained an office for the practice of law, within a given district. However, by not delineating the districts in the constitution, a flexibility is maintained in the event there is a transition in governmental affairs to regional units and in the event there is a future public acceptance of the concept of the appointment of at least some of the judges from the state as a whole for service at the trial court level.

6. The Court of Limited Jurisdiction.

a. There should be a unified court of limited jurisdiction, as determined by law.

COMMENT:

This is the fourth level of the proposed structure. It contemplates a single statewide court of original, limited jurisdiction which would replace the existing trial magistrate, People's and Municipal Courts. Districts and divisions could

be created by law. The concept of a unified court at this level would permit the transfer and assignment of judges throughout the court, to sit in any district or division thereof. Minimum qualifications for the judges thereof are contemplated.

b. The exclusive jurisdiction of this court should be uniform throughout the state.

COMMENT:

This proposal would eliminate some of the present confusion resulting from the differences in jurisdiction of the present multitude of courts of limited jurisdiction. It would not, however, preclude variations between districts of the court of limited jurisdiction in their concurrent jurisdiction with districts of the court of general jurisdictions, as provided by law. Such flexibility may be needed to assist court congestion in metropolitan areas.

7. Abolition of Orphans Courts.

COMMENT:

Another consequence of the four level structure recommended herein is that the Orphans Courts, as presently constituted, would be abolished. The Committee has no recommendation at present as to whether the functions of the present Orphans Courts should be placed in the court of original, general jurisdiction or in the court of limited jurisdiction.

II. JUDICIAL SELECTION, TENURE AND REMOVAL

1. The selection of judges should be by appointment of the Governor from a list presented to him by a nominating commission.

COMMENT:

The Committee recommends in principle the A.B.A. or Missouri plan; that is, the Committee recommends restricted, as opposed to unrestricted, gubernatorial selection, or popular election. This recommendation is made as to all four levels of the proposed structure. However, no recommendation is made at the present time concerning the specifics of such a plan, including the selection and composition of the nominating commission.

2. There should be a commission to investigate and recommend the removal of judges for misconduct in office, disability or

persistent failure to perform judicial duties.

COMMENT:

The Committee endorses the concept underlying the proposed amendment to the present Constitution (Sec. 4B of Article 4). No recommendation as to specifics, including the body in which the actual removal power should be vested, is made at the present time.

CONSTITUTIONAL CONVENTION COMMISSION

SECOND REPORT

OF THE

COMMITTEE ON THE JUDICIARY DEPARTMENT

July 17, 1966

RE: STRUCTURE AND ADMINISTRATION OF THE COURT SYSTEM;
JUDICIAL SELECTION, TENURE, RETIREMENT, AND REMOVAL.

Section 1. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system consisting of The Supreme Court of Appeals, The Appellate Court, The Circuit Court and The People's Court.

COMMENT:

The proposal expresses the concept that the judicial system is a unified system which is solely a State responsibility for operation, administration and maintenance. It is composed exclusively of four single courts. The Committee considered the ABA model constitution recommendation which expresses the unification concept by declaring all judicial power to be vested in one Court of Justice, which is then divided into the various single courts for each level of the judicial structure. However, the Committee concluded that the concept of a single Court of Justice is confusing, since it will not sit as a court (i.e., all the judges of the State at one time), it will have no jurisdiction separate from its component courts, and it will issue no writs as a separate court.

The judicial system is proposed to be a four-level structure. It incorporates, by constitution, an intermediate appellate court. A court at this level was recommended by the Maryland State Bar Association. Chapters 11 and 12 of the Laws of 1966 create a court at this level contingent upon the adoption of a constitutional amendment proposed by Chapter 10 of the Laws of 1966.

The name, "The Supreme Court of Appeals," represents a compromise in the Committee which was unanimously adopted. It was believed that the names of the various courts should be descriptive of function and that the public generally understands a "Supreme Court" as the highest court in a jurisdiction. However, the name, "Court of Appeals," recognizes history and tradition. The name was officially adopted in the Constitution of 1776. The tribunal which proceeded with appeals and writs of error appears, "from the first," to have been called informally the Court of Appeals or High Court of Appeals. Carroll T. Bond, The Court of Appeals of Maryland, A History, p. 33.

The name, "The Appellate Court," was considered descriptive. The term, "Court of Special Appeals," used in Chapter 11 of the Laws of 1966, was deemed inappropriate since this court may well have functions in addition to criminal appeals and may at some time be an intermediate appellate court for all cases.

"The Circuit Court," the name selected for the trial court of general jurisdiction, was considered both descriptive and traditional.

The Committee unanimously, but unenthusiastically, suggests "The People's Court" for the trial court of limited jurisdiction. It appeared preferable to such terms as Magistrate's Court, Justice's

Court, Municipal Court, City Court, County Court, etc., which carry in many areas of the country the connotation of a part-time adjudicator. "District Court" is possibly confusing with the federal trial court. "The People's Court," in Maryland at the present time, connotes some degree of court reform.

Section 2. The Supreme Court of Appeals.

A. Jurisdiction. The Supreme Court of Appeals shall have such jurisdiction as provided by law, and it shall have power to issue all writs necessary or appropriate in aid of its jurisdiction.

B. Composition. The Supreme Court of Appeals shall consist of a chief justice and six associate justices of The Supreme Court of Appeals. Four judges shall constitute a quorum of The Supreme Court of Appeals, and the concurrence of four shall be necessary to a decision.

COMMENT:

Although an appellate court is created at the intermediate level, the Committee deemed it advisable to retain the composition of the highest court at its present level of seven. Caseload adjustments can be made by legislation between The Supreme Court of Appeals and The Appellate Court. The American Bar Association recommends fixing the number of judges of the highest State court in the constitution to prevent packing.

The proposal would permit the court to sit in panels of four, if it so chose, although it is not contemplated that The Supreme Court of Appeals would do so, unless compelled to this device by its

caseload, in view of the tradition of argument before the full court. If panels are used, they may be as small as four, but what amounts to a majority of the full court is "necessary to a decision." The quoted language is intended to prevent affirmance of the judgment below if a panel splits and there is no concurrence of four. Reargument before the entire court would then be necessary to reach a decision.

Section 3. The Appellate Court.

A. Jurisdiction. The Appellate Court shall have such jurisdiction as may be provided by law, and it shall have power to issue all writs necessary or appropriate in aid of its jurisdiction.

B. Composition. The Appellate Court shall be composed of a chief judge and not less than four associate judges of The Appellate Court, as provided by law. The Appellate Court may sit in panels of not less than three judges, as provided by rule.

COMMENT:

Both the jurisdiction and composition are intended to achieve maximum flexibility. The minimum number of five judges is the number proposed by Chapter 11 of the Laws of 1966. This is a minimum which may be both increased, and if raised, thereafter decreased, to not less than five. If panels are not used, a majority of the entire court would be needed for decision. But, since panels are expressly permitted, without a qualification as to the number needed for decision by a panel, a majority of a panel can render a final judgment of The Appellate Court. The provision

for panels means not only that as few as three judges may sit in any case at any time, but also that the court may be divided on a regular basis into panels which serve specified geographic areas or before which cases of specified subject matters are heard. Creation of panels by rule places the initial responsibility in The Supreme Court of Appeals, but leaves this power subject to a check by the General Assembly.

Although it is contemplated that this court will have appellate jurisdiction, the Committee concluded that the conferral of jurisdiction by law should not be limited to appellate jurisdiction. It is contemplated that the General Assembly may place in the court the power to review and revise sentences in criminal cases, to take testimony in aid of decision, similar to the power of the English Court of Criminal Appeals, and to review action of administrative agencies. There was concern that some of these contemplated powers might not be "appellate." Conversely, it was believed unlikely that any substantial original jurisdiction would be conferred on the court.

Section 4. The Circuit Court.

A. Jurisdiction. The Circuit Court shall have original jurisdiction in all cases, except as otherwise provided by law. The Circuit Court may also have jurisdiction, as provided by law, on appeals from administrative agencies, and on appeals from The People's Court, and in the review and revision of sentences in criminal cases.

B. Composition. The Circuit Court shall be divided by law into districts. A district shall consist of not less than one county. If a Circuit Court district shall be composed of two or more counties, they shall be contiguous, and no county shall be divided in the formation of a Circuit Court district. There shall be not less than one resident judge of The Circuit Court in each county.

COMMENT:

The proposal is premised on these principles which were the result of extensive deliberation by the Committee and of consultation with the special committee of the Maryland State Bar Association:

1. There should be at least one resident judge for each county.

2. No county should be subdivided in creating a district of The Circuit Court, although counties can be combined.

Since a residence requirement for all judges of The Circuit Court is provided in the selection section, the effect is that all judges of The Circuit Court would be allocated to a particular county by law for the purpose of standing election, and no county would have less than one judge. If any counties are combined into a judicial district, each of the constituent counties would continue to have at least one resident judge. The imposition of a residence requirement does not interfere with the power to assign judges throughout the State. (See Section 7.)

Because the judicial power is vested exclusively in the four courts named in Section 1, which do not include Orphans' Courts as we know the same today, and because The Circuit Court is the court of general jurisdiction, the effect is that the present Orphans' Courts jurisdiction is vested in The Circuit Court. However, such jurisdiction may be vested by the General Assembly in The People's Court.

Section 5. The People's Court.

A. Jurisdiction. The People's Court shall have original jurisdiction in such cases as provided by law. Jurisdiction vested exclusively in The People's Court shall be uniform in all districts of The People's Court throughout the State.

B. Composition. The People's Court shall be divided by law into districts. A district shall consist of not less than one county. If a People's Court district shall be composed of two or more counties, they shall be contiguous and no county shall be divided in the formation of a People's Court district. There shall be not less than one resident judge of The People's Court for each district.

COMMENT:

The People's Court has no general jurisdiction, but is a court of limited jurisdiction. Its jurisdiction would be as provided by the General Assembly. This jurisdiction may be exclusive, or it may be concurrent with The Circuit Court. To the extent that it is exclusive, it must be uniform throughout the State.

The policy in favor of a resident trial judge which is recommended at The Circuit Court level was outweighed, in the Committee's opinion, by the problems of transition to a unified People's Court. The Committee on Judicial Administration of The Maryland State Bar Association, in its report to the 1966 annual meeting of that association, has proposed a unified court at this level of the structure. Such a court has also been recommended by the Maryland Judicial Conference of Judges of Courts of Limited Jurisdiction. However, the State Bar committee has recommended that the districts of this court, at least initially, will in some cases have to be composed of combinations of counties since it is believed the volume of judicial business at this level will not justify a full-time judge for each county. The jurisdiction, the districting, and the number of judges can be adjusted from time to time by legislation.

Section 6. Commissioners. Arrest warrants may be issued and bail may be set by Commissioners of The People's Court. There may be such number of Commissioners in any county, who shall have such qualifications as shall be provided by rule. Commissioners in any county shall be appointed from among the residents thereof by the senior resident judge of The Circuit Court in such county and shall serve at the pleasure of such senior resident judge.

COMMENT:

The Committee believes that effective judicial administration and law enforcement require that The People's Court judges be complemented by officers exercising functions comparable to

committing magistrates. Since these functions seem to be judicial in nature, provision for the same in the constitution was considered necessary.

Commissioners need not be appointed in every county, since a sufficient number of The People's Court judges may be available. The determination of the extent of the need is proposed to be made by rule.

The Committee believes the manner in which the functions of Commissioners are performed can seriously effect the rights of the individual and therefore gave consideration to providing that Commissioners be members of the bar. This would, however, be an abrupt transition from the present system and might make it extremely difficult in some areas to find persons meeting such a constitutional qualification who would be willing to serve. Provision for determination of the qualifications by rule "in any county" permits the qualifications to be adjusted to local conditions.

It was believed that the appointing authority should be at the highest level at which there would be personal knowledge of the individual abilities of the prospective Commissioners. It was also recognized that there may not be a resident judge of The People's Court in each county. For these reasons, the appointive power was placed in the senior resident judge of The Circuit Court. Appointment by a judicial officer, and therefore not by the governor as in the present system, has been recommended by the Maryland Judicial Conference of Judges of Courts of Limited Jurisdiction, which has recommended that the appointive power be in the judges of The People's Court.

Section 7. Administration. The chief justice of The Supreme Court of Appeals shall be the administrative head of the judicial system. He shall have the power to assign temporarily any justice or judge of the State to sit in any court of the State when he deems such assignment in the interest of the administration of justice.

The chief justice of The Supreme Court of Appeals shall designate one of the judges of The Circuit Court as chief judge of The Circuit Court, to serve as such chief judge at the pleasure of the chief justice. The chief judge of The Circuit Court shall assist the chief justice in the administration of the judicial system and shall have the power, subject to the direction of the chief justice, to assign temporarily judges of The Circuit Court and of The People's Court to sit in either of said courts at any place in the State. The chief justice shall also appoint such assistants to the chief judge of The Circuit Court as the chief justice deems necessary to facilitate the administration of the courts of the State. The chief judge of The Circuit Court shall, under the direction of the chief justice, prepare and submit to the General Assembly the budget for the judicial system and perform all other necessary functions relating to the operation of the judicial system.

COMMENT:

It is anticipated that the greatest attention in administration will be focused on the trial courts at both levels. The time required for administration justifies a special position, since the burden would be too great on the chief justice. The Committee is convinced that the special administrator must be a trial judge in order for him to function effectively. No term should be set for service in the position since it may deter trial judges from accepting the designation. Since the position of chief judge of The Circuit Court may well be full time, the trial duties of the Circuit judge designated as chief judge will have to be handled by the assignment of other judges to the chief judge's district, and, if hardship results, the General Assembly could create an additional judgeship.

Section 8. Rule-Making Power.

[The following is a statement of general principles adopted by the Committee, and not a draft of a provision.]

1. In addition to the matters elsewhere provided to be determined by rule, rules should govern (a) practice and procedure, (b) the practice of law, and (c) administration of the judicial system.

2. The power of the General Assembly should be concurrent with the rule-making power of the court on matters of practice and procedure, but the court's power should be paramount.

3. The rule-making power should be exclusive in all areas other than 2 above.

Section 9. Selection of Judges.

A. Judicial Nominating Commissions.

*(1) Nomination by Commission - Appointment
By Governor.*

Upon every occurrence of vacancy in a judicial office of fixed term, the governor shall appoint one of not less than two nor more than five qualified persons who shall be nominated for such vacancy by a judicial nominating commission as hereinafter provided. A judicial nominating commission shall make the nominations for such a vacancy not more than 30 days prior to nor more than 60 days after the occurrence of such a vacancy. In the event the governor fails to appoint one of the persons so nominated within '60 days of being advised of the list of nominees, the chief justice of The Supreme Court of Appeals shall appoint one of the persons so nominated to fill the vacancy.

(2) Appellate Courts Nominating Commission.

Nominations for vacancies on The Supreme Court of Appeals and The Appellate Court shall be made by the Appellate Courts Nominating Commission. The Appellate Courts Nominating Commission shall be composed of thirteen persons, six of whom shall be lay persons, six of whom shall be practicing lawyers, and one of whom shall be the chief justice of The Supreme Court of Appeals. The terms of the nonjudicial members of the commission shall be four years.

(3) *Trial Court Nominating Commissions.*

Nominations for vacancies on The Circuit Court and The People's Court shall be made by a Trial Court Nominating Commission. There shall be such number of trial court nominating commissions as may be provided by law. Each such commission shall make nominations for one or more districts of The Circuit Court, or for one or more districts of The People's Court, or for one or more districts of both such courts, as provided by law. Each such commission shall have an equal number of lay members and practicing lawyer members and a member of the judiciary, all of whose terms shall be as provided by law.

(4) *Lay Members of Nominating Commissions.*

Lay members of the Appellate Courts Nominating Commission shall be chosen by the governor from the qualified voters of the State. Lay members of each trial court nominating commission shall be chosen by the governor from the qualified voters of the district or districts for which such commission is established. Lay members shall not be practicing lawyers.

(5) *Lawyer Members of Nominating Commissions.*

Lawyer members of the Appellate Courts Nominating Commission shall be elected by the practicing lawyers of the State. Lawyer members of each

trial court nominating commission shall be elected by the practicing lawyers of the district or districts for which such commission is established. Such elections shall be governed by rule of The Supreme Court of Appeals which shall determine the qualifications of electors.

(6) Rules Governing Nominating Commissions.

A nominating commission may act only on the concurrence of a majority of its current membership. Each nominating commission shall elect one of its members as chairman. A non-judicial member of a nominating commission may not hold any public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no salary or compensation for their services.

B. Eligibility.

To be eligible for nomination and appointment to a judicial office of fixed term, a person shall have been a member of the bar of the State for a period of five years prior to his appointment. To be eligible for nomination and appointment as a justice of The Supreme Court of Appeals or as a judge of The Appellate Court, a person shall meet such residence requirements as may be provided by law. To be eligible for nomination and appointment as a

judge of The Circuit Court, a person shall be a resident of the county for which the vacancy exists and shall meet such other residence requirements as may be provided by law. To be eligible for nomination and appointment as a judge of The People's Court, a person shall be a resident of the district for which the vacancy exists and shall meet such other residence requirements as may be provided by law.

COMMENT:

It is unnecessary to provide for a staggering of the initial terms of the Appellate Courts Nominating Commission in the constitution. This will be done in an accompanying schedule.

The prohibition against payment to members of nominating commissions for their services is not intended to prevent reimbursement for actual expenses.

Section 10. Term of Office of Judges. At the next biennial General Election for Representatives in Congress following the expiration of two years from the date of appointment, and every twelve years thereafter so long as he retains his office, each justice or judge shall be subject to approval or rejection by the electorate as herein provided. Justices of The Supreme Court of Appeals and judges of The Appellate Court shall be subject to approval or rejection by the electorate of the State as a whole. Each judge of The Circuit Court

and of The People's Court shall be subject to approval or rejection by the electorate of that district in which he was required to reside when appointed.

In the event of the rejection of any justice or judge by the electorate, the office shall be deemed vacant and shall be filled as a vacancy.

Section 11. Retirement of Judges. Every justice or judge shall retire at the age of 70. The chief justice of The Supreme Court of Appeals, with the approval of a majority of the members of said court, is empowered to authorize retired justices or judges to perform temporary judicial duties in any court of the State.

Section 12. Removal of Judges. The Supreme Court of Appeals shall have power to remove any justice or judge from office for misconduct in office, persistent failure to perform the duties of his office, or conduct which shall prejudice the proper administration of justice, or to retire any justice or judge for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not participate in any proceedings involving his own removal or retirement. The Supreme Court of Appeals shall have power to provide by rule for the implementation of this section. Upon an order for retirement,

the justice or judge shall thereby be retired with the rights and privileges provided by law. Upon an order of removal, the justice or judge shall thereby be removed from office, his salary shall cease from the date of such order, and neither he nor his widow, upon his death, shall receive any benefits, pension, or retirement allowance accruing from judicial service.

Section 13. Compensation of Judges. The compensation of a justice or judge shall not be reduced during the term for which he was elected or appointed. Provision shall be made by the General Assembly for the payment of pensions to justices and judges and their widows.

Respectfully submitted,

Committee on the Judiciary
Department

CONSTITUTIONAL CONVENTION COMMISSION

THIRD REPORT OF THE COMMITTEE ON THE JUDICIARY DEPARTMENT

August 20, 1966

RE: ARTICLE ON THE JUDICIARY DEPARTMENT.

I. GENERAL INTRODUCTION

The proposed Article on the Judiciary Department is divided into basically three parts: the structure of the court system, the administration of the courts within the structure, and the selection, retention and removal of judges.

The Committee's recommendations with respect to structure provide great flexibility. The types of cases which the various courts will hear and the extent of review which the initial decision in any given case will have are to be determined by law.

Broad powers of administration over the court system are given to the judicial department, principally to the highest court and its chief justice.

In an otherwise general Article, a detailed procedure for the selection of judges is set forth. The governor is to make judicial appointments from a restricted list of nominees, who will be proposed by a non-partisan commission. This, coupled with continuation in office by a non-competitive election and power in the highest court to remove members of the judiciary for misconduct,

is designed to obtain the best qualified persons for judicial service and to have them independent and impartial during their service.

II. PROPOSED ARTICLE ON THE JUDICIARY DEPARTMENT

Section 1. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system consisting of The Supreme Court, The Appellate Court, The Superior Court and The District Court.

Section 2. The Supreme Court.

A. Jurisdiction. The Supreme Court shall be the highest court of the State and shall have such jurisdiction as provided by law.

B. Composition. The Supreme Court shall consist of a chief justice and six associate justices. Four justices shall constitute a quorum, and the concurrence of four shall be necessary for a decision. The State shall be divided by law into appellate judicial circuits of The Supreme Court.

Section 3. The Appellate Court.

A. Jurisdiction. The Appellate Court shall have such jurisdiction as provided by law.

B. Composition. The Appellate Court shall be composed of a chief judge and no fewer than four associate judges, as provided by law. The Appellate

Court may sit in panels of no fewer than three judges, as provided by Rule. The State shall be divided by law into appellate judicial circuits of The Appellate Court.

Section 4. The Superior Court.

A. Jurisdiction. The Superior Court shall have original jurisdiction in all cases, except as otherwise provided by law, and such other jurisdiction as provided by law.

B. Composition. The Superior Court shall be composed of a chief judge and such number of associate judges as provided by law. There shall be at least one resident judge in each county.

Section 5. The District Court.

A. Jurisdiction. The District Court shall have such original jurisdiction as provided by law. Jurisdiction of The District Court shall be uniform throughout the State.

B. Composition. The District Court shall be composed of a chief judge and such number of associate judges as provided by law. The State shall be divided by law into districts. There shall be a division of The District Court for each district. A district shall consist of at least one county. If a district is composed of two or more counties, they shall be contiguous and no county shall be divided in

the formation of a district. There shall be not less than one resident judge in each district.

C. Commissioners. There may be commissioners of The District Court in such numbers and with such qualifications as shall be provided by Rule. They shall be appointed by and serve at the pleasure of such judge of The District Court as shall be designated by Rule. The commissioners shall be authorized to issue arrest warrants and to determine whether and in what amount bail is required.

Section 6. Administration.

The chief justice of The Supreme Court shall be the administrative head of the judicial system. He shall have the power to assign temporarily any justice or judge of the State to sit in any court of the State.

The chief justice of The Supreme Court shall designate one of the judges of The Appellate Court as chief judge of The Appellate Court, shall designate one of the judges of The Superior Court as chief judge of The Superior Court, and shall designate one of the judges of The District Court as chief judge of The District Court, each of whom shall serve as chief judge at the pleasure of the chief justice. The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. The chief judge of The Superior Court shall, under the direction of the chief justice, prepare and submit to the General Assembly the budget for the judicial system. The chief judge of The District Court shall assist the chief judge of The Superior Court in the administration of the District Court.

Section 7. Rule Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations (1) governing practice and procedure in the courts of the State and (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted. In the event of conflict between such a Rule and any provision of any act of the General Assembly, the Rule, if adopted or readopted after the passage of such act, shall be paramount. Administration of the courts of the State shall be governed by Rule.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

Section 8. The Chief Justice.

The governor shall designate one of the justices of The Supreme Court as chief justice to serve as such

for the balance of his service on the court. During any vacancy in the office of chief justice or during any period when the chief justice may be unable to serve, as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve upon the associate justice senior in service on The Supreme Court.

Section 9. Selection of Judges.

A. Judicial Nominating Commissions.

(1) Nomination by Commission -
Appointment by Governor.

Upon the occurrence of a vacancy in a judicial office of fixed term, the governor shall appoint one of not less than two nor more than five qualified persons who shall be nominated for such vacancy by a judicial nominating commission as hereinafter provided. A judicial nominating commission shall make the nominations for such a vacancy not more than 30 days prior to nor more than 60 days after the occurrence of such a vacancy. In the event the governor fails to appoint one of the persons so nominated within 60 days of being advised of the list of nominees, the governor's power to fill the vacancy shall cease and the chief justice of The Supreme Court shall appoint one of the persons so nominated.

(2) Appellate Courts Nominating

Commission.

Nominations for vacancies on The Supreme Court and The Appellate Court shall be made by the Appellate Courts Nominating Commission. The Appellate Courts Nominating Commission shall be composed of thirteen persons, six of whom shall be lay persons, six of whom shall be lawyers, and one of whom shall be the chief justice of The Supreme Court. The terms of the non-judicial members of the commission shall be four years.

(3) Trial Court Nominating Commissions.

Nominations for vacancies on The Superior Court and The District Court shall be made by a Trial Court Nominating Commission. There shall be such number of Trial Court Nominating Commissions as shall be provided by law. Each such commission shall make nominations for vacancies in the office of resident Superior Court judge in one or more counties, or for vacancies in the office of District Court judge resident in one or more districts of The District Court, or both, as provided by law. Each such commission shall be composed of at least five members and shall have an equal number of lay and lawyer members and a member of the judiciary, all of whose terms shall be as provided by law.

(4) *Lawyer Members of Nominating Commissions.*

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each Trial Court Nominating Commission shall be elected by the lawyers of the area for which such commission is established. Such elections shall be governed by, and the qualifications of electors shall be as provided by, Rule. Provision shall be made by Rule for the taking of polls among the lawyers of the State, county or district, as the case may be, as to whether a justice or judge should be retained in office for full or additional term and for publication of the results thereof.

(5) *Lay Members of Nominating Commissions.*

Lay members of the Appellate Courts Nominating Commission shall be chosen by the governor from the qualified voters of the State. Lay members of each Trial Court Nominating Commission shall be chosen by the governor from the qualified voters of the area for which such commission is established.

(6) *Rules Governing Nominating Commissions.*

A nominating commission may act only on the concurrence of a majority of its current membership. Each nominating commission shall elect one of its members as chairman. A non-judicial member of a nominating commission may not hold any public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no salary or compensation for their services.

B. Eligibility.

To be eligible for nomination and appointment to a judicial office of fixed term, a person shall have been a member of the bar of the State for a period of five years prior to his appointment. To be eligible for nomination and appointment as a justice of The Supreme Court or as a judge of The Appellate Court, a person shall reside in the appellate judicial circuit where the vacancy exists. To be eligible for nomination and appointment as a judge of The Superior Court, a person shall be a resident of the county where the vacancy exists and shall meet such other residence requirements as may be provided by law. To be eligible for nomination and appointment as a judge of The District Court, a person shall be a resident of the district where the vacancy exists and shall meet such other residence requirements as may be

provided by law.

Section 10. Term of Office of Judges. At the next General Election following the expiration of two years from the date of appointment, and every [twelve] years thereafter so long as he retains his office, each justice or judge shall be subject to approval or rejection by the electorate. Justices of The Supreme Court and judges of The Appellate Court shall be subject to approval or rejection by the electorate of the State as a whole. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate of the county or district in which he was required to reside when appointed. In the event of the rejection of any justice or judge by the electorate, the office shall be deemed vacant and shall be filled as a vacancy.

Section 11. Retirement of Judges. Every justice or judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of said court, is empowered to authorize retired justices or judges to perform temporary judicial duties in any court of the State.

Section 12. Compensation of Judges. The compensation of a justice or judge shall not be reduced during the term for which he was elected or appointed.

Provision shall be made by law for the payment of pensions to justices and judges and their surviving spouses.

No justice or judge shall engage in the practice of law, run for elective office other than the judicial office he holds, or directly or indirectly make any contribution to or hold any office in a political party or organization, or take part in any political campaign, or receive any remuneration for his judicial service other than as provided by this Article.

Section 13. Removal of Judges. The Supreme Court shall have power to remove any justice or judge from office for misconduct in office or persistent failure to perform the duties of his office, or to retire any justice or judge for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any proceedings involving his own removal or retirement. The Supreme Court shall have power to provide by Rule or Order for the implementation and enforcement of this section. Upon an order for retirement, the justice or judge shall thereby be retired with the rights and privileges provided by law. Upon an order of removal, the justice or judge shall thereby be removed from office. The order of removal shall provide the extent to

which, if any, the benefits, pension or retirement allowance otherwise accruing from judicial service to the judge so removed, or to his surviving spouse, shall be paid.

Section 14. Clerks of Court. There shall be a clerk of The Supreme Court who shall be appointed by, and serve at the pleasure of, the chief justice of The Supreme Court and a clerk of The Appellate Court who shall be appointed by, and serve at the pleasure of, the chief judge of The Appellate Court.

There shall be a chief clerk of The Superior Court who shall be appointed by, and serve at the pleasure of, the chief judge of The Superior Court, and a chief clerk of The District Court who shall be appointed by, and serve at the pleasure of, the chief judge of The District Court. There shall be a chief deputy clerk of The Superior Court in each county and a chief deputy clerk of The District Court for each division. The appointment and term of chief deputy clerks shall be governed by Rule.

III. SECTION-BY-SECTION ANALYSIS OF THE PROPOSED ARTICLE ON THE JUDICIARY DEPARTMENT

Section 1. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system consisting of The Supreme Court, The

Appellate Court, The Superior Court and The District Court.

Comment:

The proposal for a unified judicial system would for the first time bring all of the courts of the State into one system which would be the responsibility of the State for maintenance and support. It would be under the administrative control of The Supreme Court and its chief justice. At the present time, particularly at the level of trial magistrate courts, the responsibility for salaries of the judges and the staff and for the quarters, is an extremely complicated combination of divided State and local responsibility. Even at the level of the present circuit courts, there is a practice of local supplementation of judicial salaries which precludes uniformity. This practice is partially caused by the problem of equating workload among the various counties. The local disparities become even greater when the staffs are considered. With the centralized control of a unified system, a more equitable result, based on uniform criteria, should be achieved, and the division of responsibility eliminated. This was one of the strongest recommendations to the Committee by the Maryland State Bar Association's special committee.

The proposed structure has four levels; a highest court, an intermediate appellate court, a trial court of general jurisdiction and a trial court of limited jurisdiction. The two trial courts will be single, statewide courts, divided into various districts.

The Supreme Court will be comparable to the present Court of Appeals. The Appellate Court is comparable to the intermediate court which has been proposed by Chapters 10, 11 and 12 of the Acts of 1966, subject to ratification of a constitutional amendment at the general election this year. The proposal is based upon a study and recommendation made by the Maryland State Bar Association. The function of a court at this level is to filter the number of cases which would otherwise be appealed to The Supreme Court in a three-tier structure. A court at this level has become necessary by the large increase in the number of appeals, particularly in criminal cases.

The Superior Court is the equivalent of a consolidation into one statewide court of all the present circuit courts of the counties and the Supreme Bench of Baltimore City. At the present time there are three separate courts in Baltimore City exercising general jurisdiction in civil law cases, two separate courts exercising general jurisdiction in equity cases, and a third court exercising general jurisdiction in criminal cases. All of the judges at this level in Baltimore City also sit as a seventh court known as the Supreme Bench of Baltimore City which has very limited jurisdiction. The effect of the present proposal is to abolish these separate courts and to consolidate them with the circuit courts of the counties in a single, statewide court.

The District Court is the court at the level of the trial magistrate system, of the People's Courts in certain counties, and of the People's Court and Municipal Court in Baltimore City.

Under the proposal all these courts will be abolished and jurisdiction at this level will be exercised by full-time judges, who will be attorneys and have tenure. The District Court is, in all material respects, consistent with the proposal overwhelmingly endorsed by the Maryland State Bar Association at its 1966 annual meeting and with recommendations of the Maryland Judicial Conference of Judges of Courts of Limited Jurisdiction.

Since the judicial power of the State is exclusively vested in these four courts, the omission of reference to Orphans' Courts, as the same are known today, means that they will be abolished. Basically, the present Orphans' Court jurisdiction is the supervision of the administration of estates and of guardianships. Presently judges of Orphans' Courts are not required to be attorneys and often are not. Many of the duties of these courts are ministerial. The proposal would vest the present jurisdiction of the Orphans' Court in The Superior Court, as the latter will be the repository of general jurisdiction, but jurisdiction over such matters could be conferred by law on The District Court.

Names: Finding satisfactory names for the four courts was difficult for the Committee. The Committee attempted to use names which would be descriptive of the function of the court.

With respect to the highest court, the Committee at first tentatively adopted the name, "Supreme Court of Appeals." This was considered to be a balance between the present "Court of Appeals" and that court's role as the supreme court of the State's system. However, after meetings with representatives of the

Maryland State Bar, members of the Maryland Judicial Council, and after the public hearing, it appeared that there was considerable sentiment for the name, "The Supreme Court," which the Committee considers most descriptive and the name which the general public uses for the present Court of Appeals.

The name, "The Appellate Court," was considered to be descriptive of the function of the intermediate appeals court. The use of the name, "Court of Appeals," at this level was rejected as a source of confusion with the present highest court. The name selected for the court of this level involved in the pending constitutional amendment is "Court of Special Appeals." It was considered that this was too restrictive as The Appellate Court may have broad appellate jurisdiction in all cases at some time in the future, with only limited review by The Supreme Court.

"The Superior Court" represents a change from the earlier reports of this Committee. The name "Circuit Court" had first been proposed, but is now considered inappropriate because no constitutional provision is made in the proposed Article for judicial circuits at this level. Other suggestions were "Court of General Sessions," "Maryland Trial Court," "District Court," and "County Court." The term Superior Court has a traditional connotation, as one of the civil law courts in Baltimore City bears that name.

For the court of limited jurisdiction, the name first proposed was "The People's Court." This is changed herein principally because the Maryland State Bar Association endorsed the

name "District Court" for the court at this level and because a number of judges of courts of limited jurisdiction thought the name "People's Court" was inappropriate. The term "District Court" is descriptive since this court will be divided into divisions serving districts of the State. Other names suggested were "Court of Sessions," "Court of Common Pleas," "Special Sessions Court," "Municipal Court," and "County Court."

Section 2. The Supreme Court.

A. Jurisdiction. The Supreme Court shall be the highest court of the State and shall have such jurisdiction as provided by law.

Comment:

The jurisdiction of The Supreme Court is to be as provided by law. The Committee had first tentatively recommended that its jurisdiction be only appellate. However, it may develop that original jurisdiction over reapportionment cases will be placed in this court, or that the General Assembly would want to give it original jurisdiction in other special matters. In any event, the power to remove judges, given to this court in Section 13, may be an exercise of original jurisdiction. Since the jurisdiction is flexible, it was considered necessary to insert a statement that The Supreme Court be the highest court of the State, so that the structure could not be inverted and provision made by law for appeals from The Supreme Court to The Appellate Court.

Some criticism of the recommendation that jurisdiction be provided by law has been made on the ground that it would allow

the General Assembly to strip The Supreme Court of jurisdiction in all cases, except in one insignificant area. The Committee does not think this is a significant danger. In any event, it could only be prevented by specifically conferring appellate jurisdiction in enumerated cases. Such an enumeration creates greater difficulty than the problem it seeks to cure.

B. Composition. The Supreme Court shall consist of a chief justice and six associate justices. Four justices shall constitute a quorum, and the concurrence of four shall be necessary for a decision. The State shall be divided by law into appellate judicial circuits of The Supreme Court.

Comment:

Having The Supreme Court composed of seven members carries forward the present size of the Court of Appeals. A specific number is set in the constitution to prevent packing. A quorum of four, with the concurrence of four necessary for a decision, means that a majority of the entire court will be needed to decide any case. It is not contemplated that a panel system would be used, but rather that the tradition of argument before the full court which prevailed before the present five member panel plan, will be restored.

Preliminary research indicates that an express provision for the issuance of writs in aid of jurisdiction is unnecessary.

The provision requiring division of the State into appellate judicial circuits relates only to eligibility requirements for

nomination and appointment as a justice of The Supreme Court (Section 9B). The circuits are not to be set out in the constitution to permit changes needed to meet shifts in population without requiring a constitutional amendment. With or without such residence requirements, local variations in legal practices make a broad geographic composition of The Supreme Court helpful in its decisions.

Section 3. The Appellate Court.

A. Jurisdiction. The Appellate Court shall have such jurisdiction as provided by law.

Comment:

This section, like the constitutional amendment to be voted on this fall, merely authorizes the General Assembly to confer jurisdiction on the court. It is anticipated that the General Assembly will initially confer the same jurisdiction on this court as is proposed for the new Court of Special Appeals. However, the jurisdiction could readily be changed by law.

B. Composition. The Appellate Court shall be composed of a chief judge and no fewer than four associate judges, as provided by law. The Appellate Court may sit in panels of no fewer than three judges, as provided by Rule. The State shall be divided by law into appellate judicial circuits of The Appellate Court.

Comment:

The composition of The Appellate Court at an initial figure of five judges is the present proposal for the Court of Special Appeals. The number of judges can be increased by law.

The provision for use of panels is permissive. If panels are not used, a majority of the entire court would be needed for decision. But, since panels are expressly permitted, without a qualification as to the number needed for a decision by a panel, a majority of a panel can render a final judgment. The provision for a panel means not only that as few as three judges may sit in any case at any time, but also that the court may be divided on a regular basis into panels which serve specific geographic areas, or which hear cases of specific subject matters.

Whether, and to what extent, panels shall be created is to be determined by Rule. "Rule" is defined in Section 7 to mean a rule adopted by The Supreme Court. The above proposal concerning panels stems from the Committee's general approach of leaving matters of internal administration to the rule making power of The Supreme Court.

The provision for circuits of The Appellate Court relates only to eligibility for nomination and appointment as judge, and is comparable to the same provision relating to The Supreme Court.

Section 4. The Superior Court.

A. Jurisdiction. The Superior Court shall have original jurisdiction in all cases, except as otherwise provided by law, and such other jurisdiction

as provided by law.

Comment:

As heretofore noted, The Superior Court is the repository of general jurisdiction in all cases. It is necessary to except from this "as otherwise provided by law" so that the General Assembly may confer original jurisdiction in specified areas on The District Court. It is also necessary to provide for "such other jurisdiction as provided by law" since The Superior Court will undoubtedly be vested by law with jurisdiction in cases which are not an exercise of original jurisdiction. For example, appeals from The District Court will undoubtedly be to The Superior Court, and so may be appeals from administrative agencies in some instances. It is unclear if the power to revise and review criminal sentences, which may be placed in The Superior Court, is an exercise of original jurisdiction.

B. Composition. The Superior Court shall be composed of a chief judge and such number of associate judges as provided by law. There shall be at least one resident judge in each county.

Comment:

Since The Superior Court is a single statewide court, there will be one chief judge for this court. His duties are described in the comments to Section 6.

The number of judges for The Superior Court would be determined by law. The Committee considered and rejected a suggestion which would limit the power of the General Assembly to create

of the history of the world, from the beginning of the world to the present time, is a subject of great importance and interest. It is a subject which has attracted the attention of all ages and all nations. The history of the world is a subject which has been the subject of many different theories and opinions. Some have thought of it as a series of events, while others have thought of it as a series of causes and effects. Some have thought of it as a series of accidents, while others have thought of it as a series of necessary events. The history of the world is a subject which has been the subject of many different theories and opinions. Some have thought of it as a series of events, while others have thought of it as a series of causes and effects. Some have thought of it as a series of accidents, while others have thought of it as a series of necessary events.

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additional judgeships to instances where this is recommended by The Supreme Court or by a judicial council. It was believed that the creation of a unified, statewide court system, with the power to adopt its own rules of administration, and the regular reappointment of the General Assembly dictated against such a substantial change, and that the new system should be given an opportunity to function to determine if there really were any problem of constitutional magnitude.

The requirement that there be at least one resident judge of The Superior Court in each county was strongly urged by the Maryland State Bar Association committee and represents the culmination of a step-by-step process in Maryland which has resulted in a resident judge of the present Circuit Courts in each county. Under the eligibility provisions (Section 9B) all judges of The Superior Court will be allocated to a particular county, and the provision in this section merely insures that each county will have at least one resident judge. The provision in Section 14, relating to clerks of court, means that there will be a clerk of The Superior Court in each county. Thus, in many respects, The Superior Court will be very similar to today's county Circuit Courts.

Section 5. The District Court.

A. Jurisdiction. The District Court shall have such original jurisdiction as provided by law. Jurisdiction of The District Court shall be uniform throughout the State.

Comment:

Jurisdiction of The District Court will be as provided by law. It is contemplated that this jurisdiction will initially be very similar to that now conferred on the trial magistrates and People's Courts, unless Orphans' Court jurisdiction, or at least the probate portion thereof, is also given to The District Court. The requirement of uniformity of jurisdiction is new. At the present time, particularly in the area of civil jurisdiction, the dollar amount which may be claimed in cases tried before trial magistrates or People's Court judges varies widely. Since the proposed court will be a unified one, the jurisdiction should be uniform. The Committee had at first considered making only the exclusive jurisdiction uniform, so that the General Assembly could make local variations in the jurisdiction which would be concurrent with The Superior Court, on the theory that a higher jurisdictional amount might be desirable in metropolitan areas. However, a number of judges of courts of limited jurisdiction saw no basis for the distinction and the Committee concluded that the desirability of statewide uniformity should prevail.

B. Composition. The District Court shall be composed of a chief judge and such number of associate judges as provided by law. The State shall be divided by law into districts. There shall be a division of The District Court for each district. A district shall consist of at least one county. If a district is composed of two or more counties, they

shall be contiguous and no county shall be divided in the formation of a district. There shall be not less than one resident judge in each district.

Comment:

There will be one chief judge for this unified State court. The number of judges are to be determined by law. The composition of this court is not oriented to the counties, but to districts to be created by law. This is based on the Maryland State Bar Association study which concluded that there may not be sufficient judicial business at this level to justify a full-time judge in each county, and it may be necessary to combine counties in some areas of the State in the formation of districts of this court. Each such district, however, is guaranteed at least one resident judge.

C. Commissioners. There may be commissioners of The District Court in such numbers and with such qualifications as shall be provided by Rule. They shall be appointed by and serve at the pleasure of such judge of The District Court as shall be designated by Rule. The commissioners shall be authorized to issue arrest warrants and to determine whether and in what amount bail is required.

Comment:

This provision for commissioners recognizes the need for such officers. In some areas there may be enough judges of The District Court, and of The Superior Court, so that there will be no

difficulty in quickly obtaining arrest warrants or determining bail. However, since these functions must be performed at any time, it is necessary that there be minor judicial officers to serve sections of the State in which there may be a relatively few, or just one, district judge. Since the functions of issuing warrants and setting bail may well be considered judicial, and since all judicial power is covered by the proposed Article, it was deemed necessary to provide expressly in this Article for the commissioners.

The number and qualification of commissioners will be determined by Rule. The Committee was hesitant to require constitutionally that commissioners be members of the bar, although such a requirement might be thought desirable. However, there may be areas of the State in which a sufficient number of commissioners could not be obtained from among the members of the bar. Leaving the qualifications to Rule allows The Supreme Court to determine when it is appropriate to require all commissioners to be attorneys. Similarly, the number of commissioners will be determined in relation to the number of hearings involved and the number of other judges, particularly District Court judges, who are available in the particular locality. The Rule provision permits flexibility in this determination.

The commissioners are to be appointed by a judge of The District Court, since the commissioners will work directly under the supervision of judges of The District Court. Judges of the present courts of limited jurisdiction have advised the Committee that difficulties have at times arisen under the present system,

under which the People's Court judges or trial magistrates have no control over the committing magistrates, who are appointed by the governor. The recommendation that commissioners serve at the pleasure of the appointing District Court judge is designed to meet this problem.

The determination of which District Court judge will make commissioner appointments in a given area is to be made by Rule. Since the districts are created and can be changed by law, this will give flexibility; it is also a matter of internal administration.

Restricting the commissioners' power to arrest warrants and bail determinations is a deliberate limitation of their powers. Some suggestions were made that the commissioners should be empowered to hold preliminary hearings (i.e., to determine if there is sufficient evidence against an arrested person to hold him for a trial) and to issue search warrants. Almost unanimously, however, it was believed by the Committee and those who consulted with it that these functions are of so serious a nature that they are best left to the judiciary.

While the functions of commissioners are comparable to those of the present committing magistrates, the Committee recommends a change in the name because of the general upgrading proposed for the court at this level and because of the association of the term "committing magistrate" with the trial magistrate system, whose abolition is proposed.

Section 6. Administration.

The chief justice of The Supreme Court shall be

the administrative head of the judicial system. He shall have the power to assign temporarily any justice or judge of the State to sit in any court of the State.

The chief justice of The Supreme Court shall designate one of the judges of The Appellate Court as chief judge of The Appellate Court, shall designate one of the judges of The Superior Court as chief judge of The Superior Court, and shall designate one of the judges of The District Court as chief judge of The District Court, each of whom shall serve as chief judge at the pleasure of the chief justice. The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. The chief judge of The Superior Court shall, under the direction of the chief justice, prepare and submit to the General Assembly the budget for the judicial system. The chief judge of The District Court shall assist the chief judge of The Superior Court in the administration of The District Court.

Comment:

This section should be read with Section 7, which expressly confers power on The Supreme Court to adopt rules of administration for all of the courts of the State. These two provisions are the heart of the internal functioning of the judicial system.

The power which may be exercised under these provisions is intentionally very broad. It is contemplated that Rules will provide for particular divisions of the trial courts to hear special types of cases, such as criminal, traffic, domestic relations, juvenile, general equity, administrative appeals, etc. Such Rules would also lay down standards regulating the hours of court, the length of judicial vacations, the conduct of the clerks' offices, the way in which records are to be kept, and requirements relating to the keeping of statistical information and the form of reporting.

The chief justice is the administrative head of the unified judicial system. The Committee has been advised that, although the present Constitution (Article 4, Section 18A) contains words of similar import, there has in the past been some question as to the extent of power intended to be conferred. However, after extensive consultation with persons who have been directly involved in the problems of judicial administration in Maryland for a number of years, the Committee is satisfied that making the chief justice the administrative head of the courts and giving rule making power to the highest court for the first time will give the chief justice the tools needed for effective judicial administration.

Although there may be some "gray area" in delineating between what the chief justice can do as administrative head, and what will require the concurrence of a majority of The Supreme Court for the adoption of a Rule, it is believed the problem is more theoretical than practical. In cases where the chief justice has any doubt, or when he ventures into new territory, he will undoubtedly take the matter up with the entire court and Rules will be promulgated.

The power to assign judges is a power conferred on the chief judge of The Court of Appeals in the present Constitution (Article 4, Section 18A). However, creation of The District Court broadens the scope of this power. The proposed power to assign is so phrased that a chief justice could assign a judge of The Superior Court to sit temporarily in The District Court. This power is a necessary consequence, in the Committee's opinion, of the unified judicial system and of the substantial upgrading of the trial magistrate's system by the creation of the full-time District Court. The Committee doubts that this power would be used often, say, by assigning a Superior Court judge temporarily to The District Court. Under the present Constitution, Circuit Court judges are regularly assigned when the need arises to sit in counties other than that of their residence, and are assigned to sit temporarily with the Court of Appeals. There is even precedent for a judge of the Court of Appeals being temporarily assigned to sit in a Circuit Court.

This section contemplates that the chief judge of The Appellate Court will be appointed by, serve at the pleasure of, and report

directly to the chief justice. The chief justice will, of course, directly administer The Supreme Court.

The position of the chief judge of The Superior Court is created as a constitutional office. This office is essentially that of administrative judge for the system of trial courts. The chief judge of The People's Court reports to the chief judge of The Superior Court. It was felt necessary to have a chief judge at both levels because of the great volume of cases at The District Court level and because the problems of disposing of and keeping records for cases at The District Court will be different from those at The Superior Court. Both of these positions will in all probability require full-time men, and it may be necessary, by Rules of administration, to designate presiding judges for administrative districts to handle part of the administrative work at the two trial court levels.

Both trial court administrative judges are to be selected from among the judges of those courts, which means they will have been nominated and appointed as judges. This provision was a matter of considerable discussion in the Committee and at its hearings. One effect of the proposal is that the field of selection for these administrative positions is narrowed from the bar as a whole to the judiciary and the provision has been criticized as minimizing the problem that a good trial judge is not necessarily a good administrator. The Committee was, on balance, persuaded by the contrary argument that only a judge in the true sense, who has been nominated and appointed to try cases and who

has actually done so, would be in a position to command the respect and exert the persuasion which will be necessary for the administrative provisions to work effectively. The unified court system is premised on making the most effective use of judicial manpower, and the only formal sanctions for the problem of a judge who is not doing his part are the removal provisions (Section 13). In the whole range of situations which can arise short of seriousness sufficient to bring to play the removal process, the ability of the administrative judges to achieve results on a personal basis is most important. For this reason, the Committee decided in favor of trial judges as administrators as opposed to a career administrator who would be given the title of judge.

The budget for the judicial system will be prepared by the chief judge of The Superior Court, under the direction of the chief justice, and submitted without executive revision to the General Assembly. The present Constitution contains a similar provision although the Committee understands that it is not consistently observed in practice (Article 3, Section 52(11)).

Section 7. Rule Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations (1) governing practice and procedure in the courts of the State and (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted. In the event of conflict between such a Rule and any provision of

any act of the General Assembly, the Rule, if adopted or readopted after the passage of such act, shall be paramount. Administration of the courts of the State shall be governed by Rule.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

Comment:

This section expresses the policy that regulations governing practice and procedure in the courts, and governing admission of persons to practice before the courts and their discipline, are of such concern that the power should be vested concurrently in The Supreme Court and in the General Assembly.

Rules of practice and procedure are detailed regulations setting forth how a case is to be brought to the court's attention, how notice of it is to be given to other parties involved, how the case progresses through the trial and appellate courts and how relief is granted. Practice and procedure do not relate to the abstract legal recognition of a right, which is the area of substantive law, but relate to determining if in a given situation, a right has been conferred, and if so, how it is to be enforced. Thus, there are many gray areas between substance and procedure. Many times statutes which confer a right also provide the procedure by which its existence is to be determined and its infringement corrected. The present Constitution permits practice and procedure to be determined both by rule and statute (Article 4, Section 18). One can theoretically repeal the other in an infinite chain. This

has not, however, been a real problem. It is uniformly agreed that the present arrangement has worked well and the Committee has concluded that it should not be substantially altered.

Present regulation of the practice of law is by both statute and rule of court. The Committee has concluded it was desirable to continue concurrent power in the two branches.

The proposal does, however, embody a change in one phrase, which is intended to terminate any difference of opinion over the status of a Rule adopted or readopted after passage of a conflicting act.

Section 8. The Chief Justice.

The governor shall designate one of the justices of The Supreme Court as chief justice to serve as such for the balance of his service on the court. During any vacancy in the office of chief justice or during any period when the chief justice may be unable to serve, as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve upon the associate justice senior in service on The Supreme Court.

Comment:

Since powers and duties are vested in the office of chief justice, it seems necessary to make specific provisions for the devolution of these functions in case of vacancy or incapacity. The question of incapacity is to be determined by the majority of the justices of The Supreme Court.

Section 9. Selection of Judges.

A. Judicial Nominating Commissions.

*(1) Nomination by Commission -
Appointment by Governor.*

Upon the occurrence of a vacancy in a judicial office of fixed term, the governor shall appoint one of not less than two nor more than five qualified persons who shall be nominated for such vacancy by a judicial nominating commission as hereinafter provided. A judicial nominating commission shall make the nominations for such a vacancy not more than 30 days prior to nor more than 60 days after the occurrence of such a vacancy. In the event the governor fails to appoint one of the persons so nominated within 60 days of being advised of the list of nominees, the governor's power to fill the vacancy shall cease and the chief justice of The Supreme Court shall appoint one of the persons so nominated.

*(2) Appellate Courts Nominating
Commission.*

Nominations for vacancies on The Supreme Court and The Appellate Court shall be made by the Appellate Courts Nominating Commission. The Appellate Courts Nominating Commission shall be composed of thirteen persons, six of whom shall be

lay persons, six of whom shall be lawyers, and one of whom shall be the chief justice of The Supreme Court. The terms of the non-judicial members of the commission shall be four years.

(3) Trial Court Nominating Commissions.

Nominations for vacancies on The Superior Court and The District Court shall be made by a Trial Court Nominating Commission. There shall be such number of Trial Court Nominating Commissions as shall be provided by law. Each such commission shall make nominations for vacancies in the office of resident Superior Court judge in one or more counties, or for vacancies in the office of District Court judge resident in one or more districts of The District Court, or both, as shall be provided by law. Each such commission shall be composed of at least five members and shall have an equal number of lay and lawyer members and a member of the judiciary, all of whose terms shall be as provided by law.

(4) Lawyer Members of Nominating Commissions.

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each Trial Court Nominating Commission shall be elected by the lawyers of the area for which such

commission is established. Such elections shall be governed by, and the qualifications of electors shall be as provided by, Rule. Provision shall be made by Rule for the taking of polls among the lawyers of the State, county or district, as the case may be, as to whether a justice or judge should be retained in office for a full or additional term and for publication of the results thereof.

(5) Lay Members of Nominating Commissions.

Lay members of the Appellate Courts Nominating Commission shall be chosen by the governor from the qualified voters of the State. Lay members of each Trial Court Nominating Commission shall be chosen by the governor from the qualified voters of the area for which such commission is established.

(6) Rules Governing Nominating Commissions.

A nominating commission may act only on the concurrence of a majority of its current membership. Each nominating commission shall elect one of its members as chairman. A non-judicial member of a nominating commission may not hold any public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission

shall receive no salary or compensation for their services.

Comment:

The Committee recommends the adoption of the American Bar Association plan of judicial selection and retention. Its principal features are appointment from a restricted list proposed by a non-partisan nominating commission and retention by a non-competitive election. This basic approach has been recommended as well by the American Judicature Society and in the Model State Constitution proposed by the National Municipal League. It is also known as the Missouri plan, since its provisions were first adopted in that state in 1940, where it is now applicable to the highest court, the three intermediate courts of appeal and to certain of the trial courts in St. Louis and Kansas City. The plan is also in effect in Alaska, Iowa, Kansas, Nebraska, and Dade County, Florida: the cities of Birmingham, Alabama, Denver, Colorado, and Tulsa, Oklahoma; and is subject to the approval of the voters in Vermont and North Dakota. The non-competitive election feature is in effect in California and Illinois, by law. Appointment from a list of nominees is followed in practice in Pennsylvania, Colorado and New York City. (See 52 ABA Journal No. 6, p. 539-542.) The plan has been recommended for Maryland by the State Bar Association and the Maryland Judicial Selection Council.

Under the present Maryland Constitution selection is by appointment of the governor whose choice is not restricted by law, although there has been a recent practice, not without exception,

of appointment from a list of persons recommended by a bar association. Under the present Constitution the appointed judge stands for election at which other candidates can file. A judge must run in a party primary in which cross-filing is permitted and in a general election in which party labels are not permitted (Article 4, Section 5).

Under the present proposal the number of nominees may be no less than two nor more than five. The plan is proposed for all courts of the State. Since it is highly conceivable that in some areas at some time there would be very few lawyers whom a commission would conscientiously be able to recommend as qualified for judicial appointment, the minimum number of nominees is set at two. Some maximum figure, which the Committee suggests as five, should be inserted. Otherwise, the list of nominees might progressively diminish in quality.

The Committee specifically declined to incorporate a provision that the person nominated must signify to the commission his intention to accept the office. Under the commission nominating system in other states, the practice has been to interview persons who are under consideration. However, it is quite possible a person who will not signify to a commission his willingness to accept appointment, will nonetheless accept if the appointment is actually offered to him by the governor. Thus, such a requirement may be restrictive and eliminate the most qualified person.

A provision is made to fill the vacancy in the event the governor fails to appoint someone within a reasonable period of

time; this power is given to the chief justice. It is considered highly unlikely that such situation will arise.

Under sub-section 2 a single nominating commission for both appellate courts (The Supreme Court and The Appellate Court) is created. It is to be statewide in composition. The composition reflects the policy that there should be an equal number of lawyers and of lay persons, and one judge, on all nominating commissions. The membership of the Appellate Courts Nominating Commission is fixed at thirteen since it is considered a sufficiently large number to be representative of the State as a whole for some time to come, and since a specific number tends to prevent packing. The members' terms are set at four years and it is contemplated that the Schedule would stagger the initial terms.

The trial court nominating procedure is of necessity more flexible. Sub-section 3 contemplates a number of commissions which will serve given localities. Since The Superior Court is oriented to the counties, there may be a nominating commission for just one county, or the same nominating commission may be the commission for The Superior Court judge in more than one county. Similarly, there may be a nominating commission for but one district of The District Court, or for more than one such district. Since the lines for districts of The District Court must coincide with county lines, the General Assembly may conclude that the same commission will act for a district or districts of The District Court and for a county or number of counties of The Superior Court.

The composition of a trial court nominating commission must be at least five persons, with an equal number of lawyer and lay members and one judge. The relatively low minimum is prompted by the problem of obtaining the best qualified persons for the commission in the less populous areas of the State, since appointment to a commission, by virtue of the provisions of sub-section 6, carries disqualification for appointment to public office during and for six months after service on a commission.

The policy embodying a member of the judiciary as a member of any nominating commission was unanimous in the Committee, but is a matter of general controversy. Many lawyers are strongly of the opinion that the presence of a judge on these commissions will mean that the judge will dominate the deliberations. The Committee considers that a judge who is interested in dictating nominations is not necessarily precluded from attempting to do so even if he is not a member of a commission. However, the Committee increased the minimum number of members of a trial court nominating commission from an earlier recommendation of three to five, in order to minimize the influence of the judge. For the same reason sub-section 6 provides that each commission shall elect one of its members as chairman.

The term of membership for nominating commissions at the trial court level is left to statute because of the problem of obtaining qualified persons to serve in less populous areas. Thus, the terms may have to be shorter in some areas, in order to make the position more attractive, than the terms in other areas.

Sub-section 4, dealing with the lawyer members of the commission, leaves the question of qualifications for voting for such members, and the conduct of these elections, to Rule.

The provision for polls among the lawyers of the area involved in the forthcoming election is an integral part of the system. One of the objections voiced against non-competitive election is that it is no election at all, so that there is no effective way to remove, at the polls, an undesirable judge. Since the lawyers of the area involved would be the ones most familiar with the performance of a particular judge, the formal expression of their opinion in a bar poll and the requirement that its results be publicized, is considered to be extremely effective as a basis for generating public opinion against continuance in office of a judge whom the bar does not consider deserving of retention in office on the basis of his performance during the probationary period.

Sub-section 5 deals with the lay members of commissions who will be appointed by the governor. Since judicial appointments are a matter of broad public concern which is not limited to the bar alone, the public should be represented on nominating commissions.

The prohibition against members of a nominating commission holding public office of profit, or office in a political party, until the seventh month after commission membership, as set forth in sub-section 6, is a necessary provision to give minimum assurance of the integrity of a commission. The prohibition is designed to prevent the making of an arrangement under which a member of a commission is given a political appointment in exchange for his

vote in nominating for a judicial office. The National Municipal League suggests that the length of the prohibition run as high as five years. The recommendation here is considered the bare minimum necessary to give any real deterrent value. The provision prohibiting salary or compensation for service on a nominating commission is not intended to prohibit the payment of actual out-of-pocket expenses.

B. Eligibility.

To be eligible for nomination and appointment to a judicial office of fixed term, a person shall have been a member of the bar of the State for a period of five years prior to his appointment. To be eligible for nomination and appointment as a justice of The Supreme Court or as a judge of The Appellate Court, a person shall reside in the appellate judicial circuit where the vacancy exists. To be eligible for nomination and appointment as a judge of The Superior Court, a person shall be a resident of the county where the vacancy exists and shall meet such other residence requirements as may be provided by law. To be eligible for nomination and appointment as a judge of The District Court, a person shall be a resident of the district where the vacancy exists and shall meet such other residence requirements as may be provided by law.

Comment:

The only express standard relating to professional qualifications for judicial appointment is five years of practice. The present Constitution sets no minimum period of practice (Article 4, Section 2). The Committee believes that general statements such as distinction for wisdom and integrity are of little significance and that the key to selection of qualified persons will lie in the willingness of those persons to accept appointment because of the non-competitive election feature. The balance of sub-section B requires that all judges be a resident of an area to which the office is allocated by law. Such residence requirements were strongly urged by the Maryland State Bar committee. The recommendation adopted insures that such districting be done, but does not put the actual districts in the Constitution, which would otherwise necessitate a constitutional amendment for future changes.

Section 10. Term of Office of Judges. At the next General Election following the expiration of two years from the date of appointment, and every [twelve] years thereafter so long as he retains his office, each justice or judge shall be subject to approval or rejection by the electorate. Justices of The Supreme Court and judges of The Appellate Court shall be subject to approval or rejection by the electorate of the State as a whole. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate of the county

or district in which he was required to reside when appointed. In the event of the rejection of any justice or judge by the electorate, the office shall be deemed vacant and shall be filled as a vacancy.

Comment:

Following his appointment, each judge will serve for from two years to just less than four years before standing election. This is a "probationary" period during which the bar and public generally can evaluate the performance of the new judge and determine whether he should be retained in office.

The term of twelve years in the section is submitted in brackets because that period of time represents the Committee's determination at the last formal vote taken on this issue. However, the composition of the Committee has changed since that time. A poll of the current Committee of five, of whom one was not available, indicates two favor a term of fourteen years, one favors twelve years, and one favors four years. The term presently provided by the Constitution is fifteen years. This is the longest term of office of any state in the country in which judges are elected. A table setting forth the terms of state judges, as of July 1964, is attached hereto as an exhibit.

The proponents of a term of sixteen years (2 + 14) contend that any reduction from the present fifteen year term will limit the field of selection for a nominating commission since it will deter the best qualified persons from accepting judicial appointment. They believe that even a non-competitive election is a risk.

They fear that even in a non-competitive election an organized militant minority in the community can bring about the defeat of a judge and that this possibility can affect the independence of a judge whose term is short in deciding a case which involves a local issue of wide public interest.

The proponents of a shorter term contend that a non-competitive election is the equivalent of re-election, unless the judge does not deserve to be retained. They feel that it is meaningless to provide for an election by the people for continuance in office and then to make the term so long that, in relation to the age at which a person is generally appointed to the bench, the appointment in most cases means a lifetime appointment.

The suggested term of twelve years represented a compromise in the Committee as formerly constituted between those espousing the viewpoints presented above.

The balance of Section 10 makes the electorate voting on retention of a trial court judge the voters of the area in which the judge was required to reside when appointed. With respect to the two appellate courts, the residence requirements will be by judicial circuits, but the election will be by the voters of the entire State. Since the election is non-competitive, it was not considered that the political risk was greatly increased by requiring election for appellate judges in an area larger than that in which they were required to reside when appointed, and it was considered desirable that the voters of the State as a whole pass on those judges whose decisions will make law for the State as a whole.

Section 11. Retirement of Judges. Every justice or judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of said court, is empowered to authorize retired justices or judges to perform temporary judicial duties in any court of the State.

Comment:

This section covers compulsory retirement and the use of retired judges.

The present Constitution requires retirement at age 70 (Article 4, Section 3). The provision has been criticized by some as imposing "constitutional senility," and as automatically depriving the State of the services of highly qualified men who in particular instances are generally considered to be fully capable of continued valuable judicial service. The present Constitution does not provide for any service, even on a selective basis, by judges who have retired.

Opponents of continued judicial service after retirement generally contend that there should be a point in time when the present judges should step aside and make way for younger men to take office. They assert that there is a tendency on the part of judges after long service to become set in their ways and to resist trends toward modernization in judicial administration, in trial techniques or in the evolution of the law itself. They object to use of retired judges even on a selected basis for special cases, because they assert that the chief justice will not be willing to

tell a former colleague, who may be urging that he be appointed for limited service, that he is no longer qualified to try and decide cases.

The Committee's recommendation is believed to represent a compromise between these two positions. The mandatory retirement is retained. However, power is provided for the use of retired judges on a selected and individual basis. The power is exercisable only with the approval of the majority of The Supreme Court. This provision is designed to insulate the chief justice from the problems based on personal relations which are advanced in opposition to selected use of retired judges.

Even though the chief justice has broad power to assign judges throughout the unified system, the Committee believes that a power to use retired judges may be a useful tool in judicial administration to help to relieve temporary court congestion without the necessity of creating additional judgeships.

The Maryland State Bar Association, by a relatively close vote, has recommended the use of retired judges only to sit as appellate judges.

Mr. Sykes of the Committee believes that the strong views of the bar should be recognized on this issue and asks to be recorded as opposed to the Committee's recommendation.

Section 12. Compensation of Judges. The compensation of a justice or judge shall not be reduced during the term for which he was elected or appointed. Provision shall be made by law for the payment of pensions

to justices and judges and their surviving spouses.

No justice or judge shall engage in the practice of law, run for elective office other than the judicial office he holds, or directly or indirectly make any contribution to or hold any office in a political party or organization, or take part in any political campaign, or receive any remuneration for his judicial service other than as provided by this Article.

Comment:

The foregoing provisions are self-explanatory and are designed to bring about both independence and impartiality of the judiciary.

Section 13. Removal of Judges. The Supreme Court shall have power to remove any justice or judge from office for misconduct in office or persistent failure to perform the duties of his office, or to retire any justice or judge for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any proceedings involving his own removal or retirement. The Supreme Court shall have power to provide by Rule or Order for the implementation and enforcement of this section. Upon an order for retirement, the justice or judge shall thereby be retired with the rights and privileges provided by law. Upon an order of removal, the justice or judge shall thereby be removed from office.

The order of removal shall provide the extent to which, if any, the benefits, pension or retirement allowance otherwise accruing from judicial service to the judge so removed, or to his surviving spouse, shall be paid.

Comment:

The recommendations concerning removal are predicated on the belief that impeachment or legislative redress are procedures too cumbersome to deal effectively with the problem of the judge who should be removed from office. Under the present Constitution, removal requires a two-thirds vote of both houses of the General Assembly which must, of course, be in session even to begin the procedure.

A constitutional amendment is proposed for ratification this year which would create a Commission on Judicial Disabilities for the review of these problems, and which would make recommendations for removal or retirement to the General Assembly. (See proposed Sections 4A and 4B of Article 4.) A two-thirds vote of both houses would be required. This presently pending constitutional amendment is in turn based upon a recommendation of the Maryland State Bar Association except that the State Bar proposed placing the power of removal in the Court of Appeals.

This Committee recommends that the power be placed in The Supreme Court, since the problem is basically one of internal administration and since a situation of such seriousness as to prompt removal proceedings should be dealt with by a procedure which is available at all times. The grounds for removal are misconduct in

office or persistent failure to perform the duties of the judicial office. The Committee considered that misconduct in office is a term broader than misconduct in the performance of judicial duties, and encompasses misconduct which affects the performance of judicial duties. For this reason one of the grounds in the presently proposed constitutional amendment has been eliminated, namely, "conduct which shall prejudice the proper administration of justice." The Committee considered the quoted language was so broad that it could be used to affect the independence of the judge.

Power is vested in The Supreme Court to provide by Rule or Order for both implementation and enforcement of this section. It is intended by these provisions that The Supreme Court could adopt rules establishing a commission of mixed lay, lawyer and judicial composition for the purpose of reviewing complaints against judges and for recommending further formal proceedings if justified by the evidence. It is also intended that The Supreme Court be able to grant immunity to witnesses and compel the attendance of witnesses and the production of evidence.

The Committee's recommendation as to the effect of an order for removal gives flexibility to The Supreme Court to determine to what extent, if at all, any accrued pension should be paid to the judge, or to his spouse. The pending constitutional amendment provides for an absolute termination of any retirement benefits. The Committee considered that this automatic forfeiture may be too harsh in a given case, particularly as to the spouse, and recommends that the matter be left to the discretion of The Supreme Court on a case by case basis.

Section 14. Clerks of Court. There shall be a clerk of The Supreme Court who shall be appointed by, and serve at the pleasure of, the chief justice of The Supreme Court and a clerk of The Appellate Court who shall be appointed by, and serve at the pleasure of, the chief judge of The Appellate Court.

There shall be a chief clerk of The Superior Court who shall be appointed by, and serve at the pleasure of, the chief judge of The Superior Court, and a chief clerk of The District Court who shall be appointed by, and serve at the pleasure of, the chief judge of The District Court. There shall be a chief deputy clerk of The Superior Court in each county and a chief deputy clerk of The District Court for each division. The appointment and term of chief deputy clerks shall be governed by Rule.

Comment:

This proposal recommends a substantial change. Clerks of the Circuit Courts are now elected. The clerk of the present Court of Appeals is appointed by the court. The proposal for the Court of Special Appeals is that its clerk be appointed by that court. In both instances the term is at the pleasure of the court. Clerks of People's Courts and those performing the functions of clerk for trial magistrates are generally appointed.

The recommendation here is based on the polity that clerks of court are an arm of the court and should be responsible to the

judiciary. An overall statewide clerk as chief clerk is recommended for each of the uniform statewide trial courts. There will be local deputies whose selection and tenure will be determined by Rule. This flexibility is necessary because the administrative organization of The Superior Court will be determined by Rule and the specific districting for the divisions of The District Court will be determined by law.

Open Matters

The Committee has not discussed the question of whether, and to what extent, the office of sheriff, or some or all of the functions and duties now performed by that office, particularly as they relate to the service and enforcement of orders and writs, should be covered in a proposed article on the judiciary.

Respectfully submitted,

Committee on the Judiciary Department

TABLE IV

TENDENCY OF JUDICIAL DECISIONS

State	Appellate Courts			(in years)			Major Trial Courts			Courts of Limited Jurisdiction		
	Court of Last Resort	Intermediate Appellate Court	Chancery Court	Circuit Court	District Court	Superior Court	Other Trial Courts	Probate Court	County Court	Municipal Court	Magistrate or Police Court	Other Courts
Alabama	6	6		6				6			4	
Alaska	10					6					a _b	
Arizona	6	6				4					4	
Arkansas	8		6	4					2	2-4	2	2 ^c
California	12	12				6				6	6	
Colorado	10				6				4		2	
Connecticut	8					8		4				4 ^d
Delaware	12		12			12				12	4, 12 ^c	4 ^e
Florida	6	6		6			4-6 ^g	4	4	2-4	4	12 ^f
Georgia	6	6				4-8		4		1-4	4	4 ^{e, h}
Hawaii	7			6						2 ⁱ	4	6 ^e
Idaho	6				4			2		2	2	
Illinois	10	10		6				j	j	j	j	4 ^e
Indiana	6	4		6		4	4 ^k	4		4	4	4 ^l
Iowa	8				6					4	2	
Kansas	6				4			2	2	2	2	
Kentucky	8			6					4		4	
Louisiana	14	12			6 ^m					4-6 ⁿ	4	6-8 ^e
Maine	7					7		4				7 ^t
Maryland	15			15			15 ^o	4	4	8-10 ^p	2	4 ^q
Massachusetts	Life			Life ^r	Life	Life	6 ^t	Life	Life	Life		Life ^s
Michigan	8	6		6		6		6		6	4	6 ^c
Minnesota	6				6			4		4	2	
Mississippi	8		4	4					4		4	u ^v
Missouri	12	12		6			4 ^c	4	4		4	4
Montana	6				4						2	
Nebraska	6				6				4	2	2	w ^w
Nevada	6				4					4	2	
New Hampshire	To age 70	7 with reappointment for life				To age 70 with reappointment for life		To age 70		To age 70		To age 70
New Jersey	7 with reappointment for life	7 with reappointment for life				7 with reappointment for life				3		5 ^y

(in years)

State	Appellate Courts		Major Trial Courts						Courts of Limited Jurisdiction			
	Court of Last Resort	Intermediate Appellate Court	Chancery Court	Circuit Court	District Court	Superior Court	Other Trial Courts	Probate Court	County Court	Municipal Court	Justice, Magistrate or Police Court	Other Courts
New Mexico	8			6				2			2	2 ^u
New York	14	5 ^z					6 ^w 14 ^{aa}	6			4	
North Carolina	8					8			2-4	2	2-6	2 ^e
North Dakota	10			6	6				2		2-4	
Ohio	6	6					6 ^c	6	4	6	4	6 ^e
Oklahoma	6				4	4			2		2	4 ^c , 6 ^e
Oregon	6			6					6		6	6 ¹
Pennsylvania	21	10					10 ^c	10	10		6	
Puerto Rico	To age 70					12					4	8 ¹
Rhode Island	Life					Life		4	4			3 ^{i, f}
South Carolina	10		4	4					2	4	ab	
South Dakota	6		4						2		2-4	ac
Tennessee	8	3	3	8			8 ^k		ad		6	8 ^{de}
Texas	6	6			4				4		4	
Utah	10				6					6	4	6 ^e
Vermont	2							2		2	2	
Virginia	12		3	8			2 ^x 8 ^{af}		4	2	4	4-6 ^e
Washington	6					4				4	4	
West Virginia	12								6	ag	eg	6-8 ^{du}
Wisconsin	10		8	6					6		2	
Wyoming	8				6						2	

a. At pleasure of Presiding Judge of Superior Court.

b. For justices of the peace. Terms of city and town magistrates provided by charter or ordinance.

c. Courts of common pleas. In Missouri, now presided over by circuit judges.

d. Circuit Court.

e. Juvenile courts; in Florida, New Jersey and Virginia, juvenile and domestic relations courts.

f. Family courts. In Rhode Island, judges serve during "good behavior."

g. Courts of record.

CONSTITUTIONAL CONVENTION COMMISSION

FOURTH REPORT

OF THE

COMMITTEE ON THE JUDICIARY DEPARTMENT

September 12, 1966

RE: ARTICLE ON THE JUDICIARY DEPARTMENT

I. GENERAL INTRODUCTION

The proposed Article on the Judiciary Department is basically divided into three parts: the structure of the court system, the administration of the courts within the structure, and the selection and tenure of judges.

The Committee's recommendations with respect to structure provide great flexibility. Only four courts are established. The types of cases which they will hear and the extent of review which the initial decision in any given case will have are to be determined by law.

Broad powers of administration over the court system are given to the judicial department, principally to the highest court and its chief justice.

In an otherwise general article, a detailed procedure for the selection of judges is set forth. The governor is restricted in making judicial appointments to a limited number of nominees, who will be proposed by a non-partisan commission. This procedure, coupled with periodic non-competitive elections for continuation in office and power in the highest court to remove members of the judiciary for misconduct, is designed to obtain the best qualified persons for judicial service, to have them independent and impartial during their service, and to permit expeditious removal where necessary.

II. PROPOSED ARTICLE ON THE JUDICIARY DEPARTMENT.

Section 1. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system composed of The Supreme Court, The Appellate Court, The Superior Court and The District Court.

Section 2. The Supreme Court.

A. Jurisdiction. The Supreme Court shall be the highest court of the State and shall have such jurisdiction as provided by law.

B. Composition. The Supreme Court shall be composed of a chief justice and six associate justices. Four justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

Section 3. The Appellate Court.

A. Jurisdiction. The Appellate Court shall have such jurisdiction as provided by law.

B. Composition. The Appellate Court shall be composed of a chief judge and no fewer than four associate judges, as provided by law. The Appellate Court may sit in panels of no fewer than three judges, as provided by Rule.

Section 4. The Superior Court.

A. Jurisdiction. The Superior Court shall have all original jurisdiction, except as otherwise provided by law and such other jurisdiction as provided by law. Jurisdiction of The Superior Court shall be uniform throughout the State.

B. *Composition.* The Superior Court shall be composed of a chief judge and no fewer than one associate judge resident in each county, as provided by law.

Section 5. The District Court.

A. *Jurisdiction.* The District Court shall have such original jurisdiction as provided by law. Jurisdiction of The District Court shall be uniform throughout the State.

B. *Composition.* The District Court shall be composed of a chief judge and no fewer than one associate judge resident in each district, as provided by law. The State shall be divided by law into districts. There shall be a division of The District Court for each district. Each district shall be composed of one or more entire and contiguous counties.

C. *Commissioners.* There may be commissioners of The District Court in such numbers and with such qualifications as provided by Rule. They shall be appointed by and serve at the pleasure of a judge of The District Court who shall be so designated by Rule. Commissioners may, in accordance with Rule, issue arrest warrants and determine whether and in what amount bail is required.

Section 6. Administration.

The chief justice of The Supreme Court shall be the administrative head of the judicial system. He shall have the power to assign any judge to sit temporarily in any court.

The chief justice of The Supreme Court shall designate one Appellate Court judge, one Superior Court judge and one

District Court judge as chief judges of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. The chief judge of The Superior Court shall, under the direction of the chief justice, prepare and transmit to the governor the estimate of expenditures of the judicial department, which shall be included in the budget without revision.

The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court. The chief judge of The District Court shall assist the chief judge of The Superior Court in the administration of The District Court.

Section 7. Rule-Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations: (1) governing practice and procedure in all courts, (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial department and officers of the executive department to the extent that their duties directly relate to the enforcement of judicial orders. In the event of conflict between such a Rule and any provision of any

act of the General Assembly, the statutory provision, if enacted or reenacted by a vote of two-thirds of the members of each house of the General Assembly after the adoption of such Rule, shall be paramount.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

ALTERNATE (Recommended by Committee)

Section 7. Rule-Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations: (1) governing practice and procedure in all courts, (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial department and officers of the executive department to the extent that their duties directly relate to the enforcement of judicial orders. In the event of conflict between such a Rule and any provision of any act of the General Assembly, the Rule, if adopted or readopted after the enactment of the statutory provision, shall be paramount over the prior act.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

Section 8. The Chief Justice.

The governor shall designate one of the justices of The Supreme Court to serve as chief justice for the balance of his service on the court or until he resigns the office of chief

justice. During a vacancy in the office of chief justice, or during a period when the chief justice is unable to serve as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve upon the associate justice senior in service on The Supreme Court.

Section 9. Selection of Judges.

A. Eligibility.

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court or to The District Court a person shall be a resident of the county or district, respectively, where the vacancy exists.

B. Nomination and Appointment.

A vacancy in the office of judge shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make the nominations for a vacancy not more than

30 days prior to nor more than 60 days after the vacancy occurs. If the governor fails to make the appointment within 60 days of being advised of the list of nominees, the governor's power to make the appointment shall cease and the chief justice of The Supreme Court shall appoint one of the nominees.

C. Nominating Commissions.

(1) Appellate Courts Nominating Commission.

Nominations for vacancies on The Supreme Court and on The Appellate Court shall be made by the Appellate Courts Nominating Commission. The Commission shall be composed of six lay persons, six lawyers, and the chief justice of The Supreme Court. The terms of non-judicial members shall be four years.

(2) Trial Courts Nominating Commissions.

Nominations for vacancies on The Superior Court and on The District Court shall be made by a Trial Court Nominating Commission. The number of trial court nominating commissions shall be provided by law. Each commission shall make nominations for vacancies in the office of Superior Court judge in one or more counties, or for vacancies in the office of District Court judge in one or more districts, or both, as provided by law. Each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge. The terms of non-judicial members shall be provided by law.

(3) Lawyer Members of Nominating Commissions.

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each Trial Court Nominating Commission shall be elected

by the lawyers of the area for which such commission is established. Elections for lawyer members of nominating commissions, including the qualifications of lawyer members and of their electors, shall be governed by Rule.

(4) *Lay Members of Nominating Commissions.*

Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the voters of the State. Lay members of each Trial Court Nominating Commission shall be chosen by the governor from the voters of the area for which such commission is established.

(5) *Rules Governing Nominating Commissions.*

A nominating commission may act only on the concurrence of a majority of its current membership. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no compensation for their services.

Section 10. Term of Office of Judges. At the next general election following the expiration of two years from the date of appointment, and every fourteen years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each justice of The Supreme Court and each judge of The Appellate Court shall be subject to approval or rejection by the electorate throughout the State. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate of the county or district

in which he was required to reside when appointed. Provision shall be made by Rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term and for publication of the results thereof. In the event of the rejection of any judge by the electorate, the office shall be vacant.

Section 11. Retirement of Judges. Each judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of that court, may authorize retired judges to perform temporary judicial duties in any court.

Section 12. Compensation of Judges. Each judge shall be compensated for his judicial service solely by the State. The compensation of a judge shall not be reduced during his continuance in office. Provision shall be made by law for the payment of pensions to judges and their surviving spouses. The same compensation, including pensions, shall be paid to all judges of the same court.

No judge shall engage in the practice of law, run for elective office other than the judicial office he holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service.

Section 13. Removal of Judges. The Supreme Court shall have power to remove any judge from office for misconduct in office or

persistent failure to perform the duties of his office, or to retire any judge for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any proceeding involving his own removal or retirement. The Supreme Court may by Rule or Order implement and enforce this section. A judge retired under this section shall have the rights and privileges provided by law. A judge removed under this section, and his surviving spouse, shall have the benefits, pension or retirement allowance otherwise accruing from his judicial service to the extent, if any, provided by the order of removal.

Section 14. Clerks of Court. The chief justice of The Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of their respective courts who shall serve at the pleasure of the appointing judge.

There shall be a chief clerk of The Superior Court in each county and for each division of The District Court. Their appointment and terms shall be governed by Rule.

III. SECTION-BY-SECTION ANALYSIS OF THE
PROPOSED ARTICLE ON THE JUDICIARY
DEPARTMENT

Section 1. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system composed of The Supreme Court, The Appellate Court, The Superior Court and The District Court.

Comment:

The proposal for a unified judicial system would for the first time bring all of the courts of the State into one system which would be the responsibility of the State for maintenance and support. It would be under the administrative control of The Supreme Court and its chief justice. At the present time, particularly at the level of trial magistrate courts, the responsibility for salaries of the judges and the staff and for the quarters is an extremely complicated combination of divided State and local responsibility. Even at the level of the present circuit courts, there is a practice of local supplementation of judicial salaries which precludes uniformity. The local disparities become even greater when the staffs are considered. With centralized control under a unified system, a more equitable result, based on uniform criteria, should be achieved, and the division of responsibility eliminated. This was one of the strongest recommendations to the Committee by the Maryland State Bar Association's special committee appointed to work with the Commission.

The proposed structure has four levels: a highest court, an intermediate appellate court, a trial court of general jurisdiction and a trial court of limited jurisdiction. The two trial courts will be single, statewide courts, divided into various divisions.

The Supreme Court will be comparable to the present Court of Appeals. The Appellate Court is comparable to the intermediate court which has been proposed by Chapters 10, 11 and 12 of the

Acts of 1966, subject to ratification of a constitutional amendment at the general election this year. The proposal is based upon a study and recommendation made by the Maryland State Bar Association. The function of a court at this level is to filter the number of cases which would otherwise be appealed to The Supreme Court in a three-tier structure. A court at this level has become necessary by reason of the large increase in the number of appeals, particularly in criminal cases.

The Superior Court is the equivalent of a consolidation into one statewide court of all the present circuit courts of the counties and the Supreme Bench of Baltimore City. At the present time there are three separate courts in Baltimore City exercising general jurisdiction in civil law cases, two separate courts exercising general jurisdiction in equity cases, and a third court exercising general jurisdiction in criminal cases. All of the judges at this level in Baltimore City also sit as a seventh court known as the Supreme Bench of Baltimore City which has very limited jurisdiction. The effect of the present proposal is to abolish these separate courts and to consolidate them with the circuit courts of the counties in a single, statewide court.

The District Court is the court at the level of the trial magistrate system, of the People's Courts in certain counties, and of the People's Court and Municipal Court in Baltimore City. Under the proposal all these courts will be abolished and jurisdiction at this level will be exercised by full-time judges, who will be attorneys and have tenure. The District Court is, in all

material respects, consistent with the proposal overwhelmingly endorsed by the Maryland State Bar Association at its 1966 annual meeting and with recommendations of the Maryland Judicial Conference of Judges of Courts of Limited Jurisdiction.

The committee also considered but rejected a proposal that all trial jurisdiction be placed in a single court, with separate divisions, one for petty cases and the other for jurisdiction comparable to that proposed for The Superior Court. Since some provision would have to be made for appeals from the petty sessions division to the general sessions division it was considered that the proposal was very close to having two separate trial courts. More fundamentally, the committee believed that the nature of the work at The District Court level is such that it would not be advisable to have a complete interchange of judges between the two divisions on a regular basis.

Since the judicial power of the State is exclusively vested in these four courts, the omission of reference to Orphans' Courts, as the same are known today, means that they will be abolished. Basically, the present Orphans' Court jurisdiction is the supervision of the administration of estates and of guardianships. Presently judges of Orphans' Courts are not required to be attorneys and often are not. Many of the duties of these courts are ministerial. The proposal would vest the present jurisdiction of the Orphans' Court in The Superior Court, as the latter will be the repository of general jurisdiction, but jurisdiction over such matters could be conferred by law on The District Court.

The exclusive vesting of judicial power in the four courts is not intended to limit the conferral by law of quasi judicial functions on administrative agencies.

Names: Finding satisfactory names for the four courts was difficult for the Committee. The Committee attempted to use names which would be descriptive of the function of the court.

With respect to the highest court, the Committee at first tentatively adopted the name, "Supreme Court of Appeals." This was considered to be a balance between the present "Court of Appeals" and that court's role as the supreme court of the State's system. However, after meetings with representatives of the Maryland State Bar, members of the Maryland Judicial Council, and after the public hearing, it appeared that there was considerable sentiment for the name, "The Supreme Court," which the Committee considers most descriptive and to be the name which the general public uses for the present Court of Appeals.

The name, "The Appellate Court," was considered to be descriptive of the function of the intermediate appeals court. The use of the name, "Court of Appeals," at this level was rejected as a source of confusion with the present highest court. The name selected for the court of this level involved in the pending constitutional amendment is "Court of Special Appeals." It was considered that this was too restrictive as The Appellate Court may have broad appellate jurisdiction in all cases at some time in the future, with only limited review by The Supreme Court.

"The Superior Court" represents a change from the earlier reports of this Committee. The name "Circuit Court" had first been proposed, but is now considered inappropriate because no constitutional provision is made in the proposed article for judicial circuits at this level. Other suggestions were "Court of General Sessions," "Maryland Trial Court," "District Court," and "County Court." The term Superior Court has a traditional connotation, as one of the civil law courts in Baltimore City bears that name.

For the court of limited jurisdiction, the name first proposed was "The People's Court." This is changed herein principally because the Maryland State Bar Association endorsed the name "District Court" for the court at this level and because a number of judges of courts of limited jurisdiction thought the name "People's Court" was inappropriate. The term "District Court" is descriptive since this court will be divided into divisions serving districts of the State. Other names suggested were "Court of Sessions," "Court of Common Pleas," "Special Sessions Court," "Municipal Court," and "County Court."

Section 2. The Supreme Court.

A. Jurisdiction. The Supreme Court shall be the highest court of the State and shall have such jurisdiction as provided by law.

Comment:

The jurisdiction of The Supreme Court is to be as provided by law. The Committee had first tentatively recommended that its

jurisdiction be only appellate. However, it may develop that original jurisdiction over reapportionment cases will be placed in this court, or that the General Assembly would want to give it original jurisdiction in other special matters. In any event, the power to remove judges, given to The Supreme Court in Section 13, may be an exercise of original jurisdiction. Since the jurisdiction is flexible, it was considered necessary to insert a statement that The Supreme Court be the highest court of the State, so that the structure could not be inverted and provision made by law for appeals from The Supreme Court to The Appellate Court.

Some criticism of the recommendation that jurisdiction be provided by law has been made on the ground that it would allow the General Assembly to strip The Supreme Court of jurisdiction in all cases, except in one insignificant area. The Committee does not think this is a significant danger. The present Constitution (Art. 4, Sec. 14) simply provides that the jurisdiction of the Court of Appeals shall be "as prescribed by law." In any event, a divesting of jurisdiction could only be prevented by specifically conferring appellate jurisdiction in enumerated cases in the constitution. Such an enumeration creates greater difficulty than the problem it seeks to cure.

B. Composition. The Supreme Court shall be composed of a chief justice and six associate justices. Four justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

Comment:

Having The Supreme Court composed of seven members carries forward the present size of the Court of Appeals. A specific number is set in the constitution to prevent packing. A quorum of four, with the concurrence of four necessary for a decision, means that a majority of the entire court will be needed to decide any case. It is not contemplated that a panel system would be used, but rather that the tradition of argument before the full court, which prevailed before the present five member panel plan, will be restored.

Preliminary research indicates that an express provision for the issuance of writs in aid of jurisdiction is unnecessary.

Section 3. The Appellate Court.

A. Jurisdiction. The Appellate Court shall have such jurisdiction as provided by law.

Comment:

This section, like the constitutional amendment to be voted on this fall, merely authorizes the General Assembly to confer jurisdiction on the court. It is anticipated that the General Assembly will initially confer the same jurisdiction on this court as is proposed for the new Court of Special Appeals. However, the jurisdiction could readily be changed by law.

B. Composition. The Appellate Court shall be composed of a chief judge and no fewer than four

associate judges, as provided by law. The Appellate Court may sit in panels of no fewer than three judges, as provided by Rule.

Comment:

The composition of The Appellate Court at an initial figure of five judges is the present proposal for the Court of Special Appeals. The number of judges can be increased by law.

The provision for use of panels is permissive. If panels are not used, a majority of the entire court would be needed for decision. But, since panels are expressly permitted, without a qualification as to the number needed for a decision by a panel, a majority of a panel can render a final judgment. The provision for a panel means not only that as few as three judges may sit in any case at any time, but also that the court may be divided on a regular basis into panels which serve specific geographic areas, or which hear cases of specific subject matters.

Whether, and to what extent, panels will be created is to be determined by Rule. "Rule" is defined in Section 7 to mean a rule adopted by The Supreme Court. The above proposal concerning panels stems from the Committee's general approach of leaving matters of internal administration to the rule making power of The Supreme Court.

Section 4. The Superior Court.

A. Jurisdiction. The Superior Court shall have all original jurisdiction, except as otherwise provided by law and such other jurisdiction as provided

by law. Jurisdiction of The Superior Court shall be uniform throughout the State.

Comment:

As heretofore noted, The Superior Court is the repository of general jurisdiction in all cases. It is necessary to except from this "as otherwise provided by law" so that the General Assembly may confer original jurisdiction in specified types of cases on The District Court. It is also necessary to provide for "such other jurisdiction as provided by law" since The Superior Court will undoubtedly be vested by law with jurisdiction in cases which are not an exercise of original jurisdiction. For example, appeals from The District Court will undoubtedly be to The Superior Court, and so may be appeals from administrative agencies in some instances. It is unclear if the power to revise and review criminal sentences, which may be placed in The Superior Court, is an exercise of original jurisdiction.

B. Composition. The Superior Court shall be composed of a chief judge and no fewer than one associate judge resident in each county, as provided by law.

Comment:

Since The Superior Court is a single statewide court, there will be one chief judge for this court. His duties are described in the comments to Section 6.

The number of judges for The Superior Court would be determined by law. The Committee considered and rejected a suggestion which would limit the power of the General Assembly to create additional judgeships to instances where this is recommended by The Supreme Court or by a judicial council. It was believed that the creation of a unified, statewide court system, with the power to adopt its own rules of administration, and the regular reapportionment of the General Assembly, dictated against such a substantial change, and that the new system should be given an opportunity to function to determine if there really were any problems of constitutional magnitude.

The requirement that there be at least one resident judge of The Superior Court in each county was strongly urged by the Maryland State Bar Association committee and represents the culmination of a step-by-step process in Maryland which has resulted in a resident judge of the present Circuit Courts in each county. Under the eligibility provisions (Section 9B) each judge of The Superior Court will be allocated to a particular county, and the provision in this section merely insures that each county will have at least one resident judge. The provision in Section 14, relating to clerks of court, means that there will be a clerk of The Superior Court in each county. Thus, in many respects, The Superior Court will be very similar to today's county Circuit Courts.

The requirement of uniform jurisdiction supplements the same provision for The District Court, discussed infra.

Section 5. The District Court.

A. Jurisdiction. The District Court shall have such original jurisdiction as provided by law. Jurisdiction of The District Court shall be uniform throughout the State.

Comment:

Jurisdiction of The District Court both exclusive and concurrent will be as provided by law. It is contemplated that this jurisdiction will initially be very similar to that now conferred on the trial magistrates and People's Courts, unless Orphans' Court jurisdiction, or at least the probate portion thereof, is also given to The District Court. The requirement of uniformity of jurisdiction is new. At the present time, particularly in the area of civil jurisdiction, the dollar amount which may be claimed in cases tried before trial magistrates or People's Court judges varies widely. Since the proposed court will be a unified one, the jurisdiction should be uniform. The Committee had at first considered making only the exclusive jurisdiction uniform, so that the General Assembly could make local variations in that jurisdiction which would be concurrent with The Superior Court, on the theory that a higher jurisdictional amount might be desirable in metropolitan areas. However, a number of judges of courts of limited jurisdiction saw no basis for the distinction. Since the litigants will have the option of using the District or Superior court where jurisdiction is concurrent, the same result can be achieved by setting a uniform high limit on concurrent jurisdiction.

B. Composition. The District Court shall be composed of a chief judge and no fewer than one associate judge resident in each district, as provided by law. The State shall be divided by law into districts. There shall be a division of The District Court for each district. Each district shall be composed of one or more entire and contiguous counties.

Comment:

There will be one chief judge for this unified State court. The number of judges are to be determined by law. The composition of this court is not oriented to the counties, but to districts to be created by law. The Maryland State Bar Association study concluded that there may not be sufficient judicial business at this level to justify a full-time judge in each county, and that it may be necessary to combine counties in some areas in the formation of districts. Since there is some question of the necessity or desirability of having a District judge in each county, at least initially, the Committee did not consider it advisable to require a District judge for each county by constitution. Rather, the matter should be left to the General Assembly which is better able to reflect the various policy considerations in the formation of districts from time to time. Each district, however, is guaranteed at least one resident judge.

C. Commissioners. There may be commissioners of The District Court in such numbers and with such qualifications as provided by Rule. They shall be appointed by and serve at the pleasure of a judge of The District Court who shall be so designated by Rule. Commissioners may, in accordance with Rule, issue arrest warrants and determine whether and in what amount bail is required.

Comment:

This provision for commissioners recognizes the need for such officers. In some areas there may be enough judges of The District Court, and of The Superior Court, so that there will be no difficulty in quickly obtaining arrest warrants or determining bail. However, since these functions must be performed at any time, it is necessary that there be minor judicial officers to serve sections of the State in which there may be a relatively few, or just one, district judge. Since the functions of issuing warrants and setting bail may well be considered judicial, and since all judicial power is covered by the proposed article, it was deemed necessary to provide expressly in this article for the commissioners.

The number and qualification of commissioners will be determined by Rule. The Committee was hesitant to require constitutionally that commissioners be members of the bar, although such a requirement might be thought desirable. However, there may be areas of the State in which a sufficient number of commissioners

could not be obtained from among the members of the bar. Leaving the qualifications to Rule allows The Supreme Court to determine when it is appropriate to require all commissioners to be attorneys. Similarly, the number of commissioners will be determined in relation to the number of hearings involved and the number of other judges, particularly District Court judges, who are available in the particular locality. The Rule provision permits flexibility in this determination.

The commissioners are to be appointed by a judge of The District Court, since the commissioners will work directly under the supervision of judges of The District Court. Judges of the present courts of limited jurisdiction have advised the Committee that difficulties have at times arisen under the present system, under which the People's Court judges or trial magistrates have no control over the committing magistrates, who are appointed by the governor. The recommendation that commissioners serve at the pleasure of the appointing District Court judge is designed to meet this problem.

The determination of which District Court judge will make commissioner appointments in a given area is to be made by Rule. Since the districts are created and can be changed by law, this will give flexibility. It is a matter of internal administration.

Restricting the commissioners' power to arrest warrants and bail determinations is a deliberate limitation of their powers. Some suggestions were made that the commissioners should be empowered to hold preliminary hearings (i.e., to determine if there

is sufficient evidence against an arrested person to hold him for a trial) and to issue search warrants. Almost unanimously, however, it was believed by the Committee and those who consulted with it that these functions are of so serious a nature that they are best left to the judiciary.

The express statement that commissioners exercise their functions "in accordance with Rule" is inserted out of an abundance of caution to preclude any contention to the contrary. The statement is not intended to imply that other officers of the judicial department are not similarly subject to Rule, even if the express qualification is not set forth as to their exercise of functions.

While the functions of commissioners are comparable to those of the present committing magistrates, the Committee recommends a change in the name because of the general upgrading proposed for the court at this level and because of the association of the term "committing magistrate" with the trial magistrate system, the abolition of which is proposed.

Section 6. Administration.

The chief justice of The Supreme Court shall be the administrative head of the judicial system. He shall have the power to assign any judge to sit temporarily in any court.

The chief justice of The Supreme Court shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judges of

their respective courts. Each shall serve as chief judge at the pleasure of the chief justice.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. The chief judge of The Superior Court shall, under the direction of the chief justice, prepare and transmit to the governor the estimate of expenditures of the judicial department, which shall be included in the budget without revision.

The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court. The chief judge of The District Court shall assist the chief judge of The Superior Court in the administration of The District Court.

Comment:

This section should be read with Section 7, which expressly confers power on The Supreme Court to adopt rules of administration for all of the courts of the State. These two provisions are the heart of the internal functioning of the judicial system.

The power which may be exercised under these provisions is intentionally very broad. It is contemplated that Rules will provide for particular divisions of the trial courts to hear special types of cases, such as criminal, traffic, domestic relations, juvenile, general equity, administrative appeals,

etc. Such Rules would also lay down standards regulating the hours of court, the length of judicial vacations, the conduct of the clerks' offices, the way in which records are to be kept, and requirements relating to the keeping of statistical information and the form of reporting.

The chief justice is the administrative head of the unified judicial system. The Committee has been advised that, although the present Constitution (Article 4, Section 18A) contains words of similar import, there has in the past been some question as to the extent of power intended to be conferred. However, after extensive consultation with persons who have been directly involved in the problems of judicial administration in Maryland for a number of years, the Committee is satisfied that making the chief justice the administrative head of the courts and for the first time giving administrative rule-making power to the highest court will give the chief justice the tools needed for effective judicial administration. Although there may be some "gray area" in delineating between what the chief justice can do as administrative head, and what will require the concurrence of a majority of The Supreme Court for the adoption of a Rule, it is believed the problem is more theoretical than practical. In cases where the chief justice has any doubt, or when he ventures into new territory, he will undoubtedly take the matter up with the entire court and Rules will be promulgated.

The power to assign judges is a power conferred on the chief judge of The Court of Appeals in the present Constitution (Article 4, Section 18A). However, creation of The District

Court broadens the scope of this power. The proposed power to assign is so phrased that a chief justice could assign a judge of The Superior Court to sit temporarily in The District Court. This power is a necessary consequence, in the Committee's opinion, of the unified judicial system and of the substantial upgrading of the trial magistrate's system by the creation of the full-time District Court. The Committee doubts that Superior Court judges would be so assigned other than on very rare occasions. Under the present Constitution, Circuit Court judges are regularly assigned when the need arises to sit in counties other than that of their residence, and are assigned to sit temporarily with the Court of Appeals. There is even precedent for a judge of the Court of Appeals being temporarily assigned to sit in a Circuit Court.

This section contemplates that the chief judge of The Appellate Court will be appointed by, serve at the pleasure of, and report directly to the chief justice. The chief justice will, of course, directly administer The Supreme Court.

The position of the chief judge of The Superior Court is created as a constitutional office. This office is essentially that of administrative judge for the system of trial courts. The chief judge of The District Court reports to the chief judge of The Superior Court. It was felt necessary to have a chief judge at both levels because of the great volume of cases at The District Court level and because the problems of disposing of and keeping records for cases in The District Court will be different from those in The Superior Court. Both of these

positions will in all probability require full-time men, and it may be necessary, by Rules of administration, to designate presiding judges for administrative districts to handle part of the administrative work at the two trial court levels.

Both trial court administrative judges are to be selected from among the judges of those courts, which means they will have been nominated and appointed as judges. This provision was a matter of considerable discussion in the Committee and at its hearings. One effect of the proposal is that the field of selection for these administrative positions is narrowed from the bar as a whole to the judiciary. The provision has been criticized as minimizing the problem that a good trial judge is not necessarily a good administrator. The Committee was, on balance, persuaded by the contrary argument that only a judge in the true sense, who has been nominated and appointed to try cases and who has actually done so, would be in a position to command the respect and exert the persuasion which will be necessary for the administrative provisions to work effectively. The unified court system is premised on making the most effective use of judicial manpower, and the only formal sanctions for the problem of a judge who is not doing his part are the removal provisions (Section 13). In the whole range of situations which can arise short of seriousness sufficient to bring to play the removal process, the ability of the administrative judges to achieve results on a personal basis is most important. For this reason, the Committee decided in favor of trial judges as administrators

as opposed to a career administrator who would be given the title of judge.

With respect to the budget of the judicial department, the Committee recommends that requests of that department be incorporated by the governor in the budget and submitted without revision to the General Assembly. The recommendation is, in the Committee's opinion, the substance of present Article 3, Section 52(11), which the Committee understands has not been consistently followed in practice. Since the judicial department is a separate branch of government, its requests for funds should be submitted as such to the legislature, and not be subject to change by the executive. The Committee is advised that the Committee on State Finance and Taxation has not as yet taken any position on this question. If the Commission concludes that the provision would be more appropriately included in a section of the constitution on the budget, the substance of the recommendation should nevertheless be retained since it bears substantial relation to the judicial department.

Section 7. Rule-Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations:(1) governing practice and procedure in all courts,(2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial

department and, officers of the executive department to the extent that their duties directly relate to the enforcement of judicial orders. In the event of conflict between such a Rule and any provision of any act of the General Assembly, the statutory provision, if enacted or reenacted by a vote of two-thirds of the members of each house of the General Assembly after the adoption of such Rule, shall be paramount.

"Rule" as used in this article means a rule adopted by The Supreme Court.

ALTERNATE (Recommended by Committee)

Section 7. Rule-Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations: (1) governing practice and procedure in all courts, (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial department and, officers of the executive department to the extent that their duties directly relate to the enforcement of judicial orders. In the event of conflict between such a Rule and any provision of any act of the General Assembly, the Rule, if adopted or readopted after the enactment of the statutory provision, shall be paramount over the prior act.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

Comment:

Both texts recognize as a matter of policy that the legislative and judicial branches have an interest in practice and procedure, regulation of the bar and administration of the Courts. The text first presented represents the result of the vote of the Commission (8-7) at the meeting in College Park on August 22, 1966. Under such a provision all three types of rules are subject to the ultimate control of the General Assembly by a two-thirds vote of each house. It was agreed that the Commission vote would not preclude further consideration of the matter. Alternate Section 7 represents the unanimous position of the four members of the five member committee on the judiciary department who reviewed the matter following the Commission's vote. The alternative is patterned after the proposal set forth in the third report of the committee, and would permit the Court to have a continuing power in these matters even if its position were contrary to that of the General Assembly.

The discussion by the Commission on the proposal in the third report indicated concern in two areas. One was that a strong chief justice could abuse the power of administration. The second objection was that the constitution should define the final arbiter in the event of continued adoption of conflicting provisions.

A rule must be adopted by the Supreme Court, and cannot be promulgated by the chief justice alone. It is necessary for the

chief justice to convince at least three other members of the Court that a given rule should be adopted. The practice in Maryland, with regard to procedural rules, has been that they are proposed by a standing committee of judges and lawyers and adopted by a unanimous order. It is anticipated this will be the practice under the recommended provision. In any event, the objection based on unbridled power can equally be leveled at the possible exercise of powers conferred on the executive or on the legislature. Since judicial administration in the broad sense is primarily the responsibility of the courts, the paramount power to resolve issues relating thereto should not be placed in the General Assembly, which in any event retains an ultimate power by its control of the pursestrings. The Committee's recommended proposal would simply continue the present arrangement relating to practice and procedure and the bar, and extend it to the rules of administration as well.

Under the committee's proposal, as under the present constitution (Article 4, Section 18) relating to procedural rules, a rule could repeal a statute or a statute could repeal a rule, in an infinite chain. In the few instances in the past where the General Assembly has proposed or enacted a conflicting law relating to practice and procedure, the matter has been resolved in favor of the rule by consultation between the two branches of government. While it might at first appear that any possible unseemly conflict should be avoided by defining the paramount power, the placing of final power in the General Assembly could expose the years of work on the Maryland Rules

or a well ordered plan of administration to disruption based on extraneous considerations. The Committee urges that the Court should not be precluded by the enactment of a conflicting statute from being able to take further direct action. The Court should retain the power to continue asserting a position which it firmly believes is correct, in these areas which are of immediate concern to it, should the need to do so ever arise.

The office of sheriff is not set forth as a constitutional office in the proposed article. The present constitution (Article 4, Section 44) provides that sheriffs have such duties as "fixed by law." These duties vary with the locality and often include law enforcement. Thus it did not seem advisable either to define the duties in a constitution or to require such officers to be wholly under the control of the judicial department. However, provision is made that officers who execute judicial orders, be they sheriffs, constables or even police officers, are subject to rules of administration as to that aspect of their duties.

Section 8. The Chief Justice.

The governor shall designate one of the justices of The Supreme Court to serve as chief justice for the balance of his service on the court or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or during a period when the chief justice is unable to serve as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve

upon the associate justice senior in service on The Supreme Court.

Comment:

Since powers and duties are vested in the office of chief justice, it seems necessary to make specific provisions for the devolution of these functions in case of vacancy or incapacity. The question of incapacity is to be determined by the majority of the justices of The Supreme Court.

Section 9. Selection of Judges.

A. Eligibility.

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court or to The District Court a person shall be a resident of the county or district, respectively, where the vacancy exists.

B. Nomination and Appointment.

A vacancy in the office of judge shall be

filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make the nominations for a vacancy not more than 30 days prior to nor more than 60 days after the vacancy occurs. If the governor fails to make the appointment within 60 days of being advised of the list of nominees, the governor's power to make the appointment shall cease and the chief justice of The Supreme Court shall appoint one of the nominees.

C. Nominating Commissions

(1) Appellate Courts Nominating Commission.

Nominations for vacancies on The Supreme Court and on The Appellate Court shall be made by the Appellate Courts Nominating Commission. The Commission shall be composed of six lay persons, six lawyers, and the chief justice of The Supreme Court. The terms of non-judicial members shall be four years.

(2) Trial Courts Nominating Commissions.

Nominations for vacancies on The Superior Court and on the District Court shall be made by a Trial Court Nominating Commission. The number of trial court nominating commissions shall be provided by law. Each commission shall make

nominations for vacancies in the office of Superior Court judge in one or more counties, or for vacancies in the office of District Court judge in one or more districts, or both, as provided by law. Each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge. The terms of non-judicial members shall be provided by law.

(3) Lawyer Members of Nominating Commissions.

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each Trial Court Nominating Commission shall be elected by the Lawyers of the area for which such commission is established. Elections for lawyer members of nominating commissions, including the qualifications of lawyer members and of their electors, shall be governed by Rule.

(4) Lay Members of Nominating Commissions.

Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the voters of the State. Lay members of each Trial Court Nominating Commission shall be chosen by the governor from the voters of the area for which such commission is established.

(5) Rules Governing Nominating Commissions.

A nominating commission may act only

on the concurrence of a majority of its current membership. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no compensation for their services.

Comment:

The Committee recommends the adoption of the American Bar Association plan of judicial selection and retention. Its principal features are appointment from a restricted list proposed by a non-partisan nominating commission and retention by a non-competitive election. This basic approach has been recommended as well by the American Judicature Society and in the Model State Constitution proposed by the National Municipal League. It is also known as the Missouri plan, since its provisions were first adopted in that state in 1940, where it is now applicable to the highest court, the three intermediate courts of appeal, and to certain of the trial courts in St. Louis and Kansas City. The plan is also in effect in Alaska, Iowa, Kansas, Nebraska, and Dade County, Florida; the cities of Birmingham, Alabama, Denver, Colorado, and Tulsa, Oklahoma; and is subject to the approval of the voters in Vermont, North Dakota, Florida and Kentucky. The non-competitive election feature is in effect in California and Illinois, by law. Appointment from a list of nominees is followed in practice in Pennsylvania, Colorado and

New York City. (See 52 ABA Journal No. 6, pp.539-542.) The plan has been recommended for Maryland by the State Bar Association and the Maryland Judicial Selection Council.

Under the present Maryland Constitution selection is by appointment of the governor whose choice is not restricted by law, although there has been a recent practice, not without exception, of appointment from a list of persons recommended by a bar association. The appointed judge stands for election, at which other candidates can file. He must run in a party primary in which cross-filing is permitted and in a general election in which party labels are not permitted (Article 4, Section 5).

Under the proposal (sub-section A), the only express standard relating to professional qualifications for judicial appointment is five years of practice. The present Constitution sets no minimum period of practice (Article 4, Section 2). The Committee believes that general statements such as distinction for wisdom and integrity are of little significance and that the key to selection of qualified persons will lie in the willingness of those persons to accept appointment because of the non-competitive election feature. The balance of sub-section A requires that all judges be a resident of an area to which the office is allocated by law. Such residence requirements were strongly urged by the Maryland State Bar committee. The recommendation adopted insures that such districting will be done by law, but does not delineate districts in the Constitution. The provisions for circuits of the appellate courts relate solely to eligibility for nomination and appointment.

Under the present proposal the number of nominees may be no less than two nor more than five. (Sub-section B.) The plan is proposed for all courts of the State. Since it is highly conceivable that in some areas at some time there would be very few lawyers whom a commission would conscientiously be able to recommend as qualified for judicial appointment, the minimum number of nominees is set at two. Some maximum figure, which the Committee suggests as five, should be inserted. Otherwise, the list of nominees might progressively diminish in quality.

The Committee specifically declined to incorporate a provision that the person nominated must signify to the commission his intention to accept the office. Under the commission nominating system in other states, the practice has been to interview persons who are under consideration. However, it is quite possible a person who will not signify to a commission his willingness to accept appointment, will nonetheless accept if the appointment is actually offered to him by the governor. Thus, such a requirement may be restrictive and eliminate the most qualified person.

A provision is made to fill the vacancy in the event the governor fails to appoint someone within a reasonable period of time. This power is given to the chief justice. It is considered highly unlikely that such situation will arise.

The composition of nominating commissions is based on the general policy that they should have an equal number of lay and lawyer members, and one judge. In recommending the A.B.A.

method of selection in the past, the Maryland State Bar Association has specifically voted to have a judge on each commission. The committee was unanimous in its recommendation on this point. However, it is a matter of controversy among attorneys generally. Many lawyers are strongly of the opinion that the presence of a judge on these commissions will mean that the judge will dominate the deliberations. The Committee considers that a judge who is interested in dictating nominations is not necessarily precluded from attempting to do so even if he is not a member of a commission. However, the Committee increased the minimum number of members of a trial court nominating commission from an earlier recommendation of three to five, in order to minimize the influence of the judge. For the same reason sub-section C(5) provides that each commission shall elect one of its members as chairman.

Under sub-section C(1), a single nominating commission for both appellate courts is created. It is to be statewide in composition. The membership of the Appellate Courts Nominating Commission is fixed at thirteen since it is considered a sufficiently large number to be representative of the State as a whole for some time to come, and since a specific number tends to prevent packing. The members' terms are set at four years and it is contemplated that the Schedule would stagger the initial terms. The committee concluded that it was not necessary to require districting for the members of this commission. Political realities will compel the governor to appoint lay persons from throughout the state and districting could be required by Rule for lawyer members.

The trial court nominating procedure is of necessity more flexible. Sub-section C(2) contemplates a number of commissions which will serve given localities. Since The Superior Court is oriented to the counties, there may be a nominating commission for just one county, or the same nominating commission may be the commission for The Superior Court judges in more than one county. Similarly, there may be a nominating commission for but one district of The District Court, or for more than one such district. Since the lines for districts of The District Court must coincide with county lines, the General Assembly may conclude that the same commission will act for a district or districts of The District Court and for a county or number of counties of The Superior Court.

The composition of a trial court nominating commission must be at least five persons, with an equal number of lawyer and lay members and one judge. The relatively low minimum is prompted by the problem of obtaining the best qualified persons for the commission in the less populous areas of the State, since appointment to a commission, by virtue of the provisions of sub-section C(5), carries disqualification for appointment to public office during and for six months after service on a commission.

The term of membership for nominating commissions at the trial court level is left to statute because of the problem of obtaining qualified persons to serve in less populous areas. Thus, the terms may have to be shorter in some areas, in order to make the position more attractive, than the terms in other areas.

Sub-section C(3), dealing with the lawyer members of a commission, leaves the question of qualifications for the members, their electors, and the conduct of these elections, to Rule.

Sub-section C(4) deals with the lay members of commissions who will be appointed by the governor. Since judicial appointments are a matter of broad public concern which is not limited to the bar alone, the public should be represented on nominating commissions.

The prohibition against members of a nominating commission holding public office of profit, or office in a political party, until the seventh month after commission membership, as set forth in sub-section C(5), is a necessary provision to give minimum assurance of the integrity of a commission. The prohibition is designed to prevent the making of an arrangement under which a member of a commission is given a political appointment in exchange for his vote in nominating for a judicial office. The National Municipal League suggests that the length of the prohibition run as high as five years. The recommendation here is considered the bare minimum necessary to give any real deterrent value. The provision prohibiting salary or compensation for service on a nominating commission is not intended to prohibit the payment of actual out-of-pocket expenses.

Section 10. Term of Office of Judges.

At the next general election following the expiration of two ye ars from the date of appointment, and every fourteen years there- after so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each Justice of The Supreme Court and each judge of The Appellate Court shall be subject to approval or rejection by the electorate throughout the State. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate of the county or district in which he was required to reside when appointed. Provision shall be made by Rule for the taking of a poll of the lawyers in the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term and for publication of the results thereof. In the event of the rejection of any judge by the electorate, the office shall be vacant.

Comment:

Following his appointment, each judge will serve for from two years to just less than four years before standing

election. This is a "probationary" period during which the bar and public generally can evaluate the performance of the new judge and determine whether he should be retained in office.

A term of fourteen years in the section is recommended. In the current Committee of five members, three favor a term of fourteen years, one favors twelve years, and one favors four years. The term presently provided by the Constitution is fifteen years. This is the longest term of years of any state in the country in which judges are elected. A table setting forth the terms of state judges, as of July 1964, is attached hereto as an exhibit.

The proponents of a term of sixteen years (2 + 14) contend that any reduction from the present fifteen year term will limit the field of selection for a nominating commission since it will deter the best qualified persons from accepting judicial appointment. They believe that even a non-competitive election is a risk. They fear that even in a non-competitive election an organized militant minority in the community can bring about the defeat of a judge and that this possibility can affect the independence of a judge whose term is short in deciding a case which involves a local issue of wide public interest.

The proponents of a shorter term contend that a non-competitive election is the equivalent of re-election, unless the judge does not deserve to be retained. They feel that it is meaningless to provide for an election by the people for

continuance in office and then to make the term so long that, in relation to the age at which a person is generally appointed to the bench, the appointment in most cases means a lifetime appointment.

The provision for polls among the lawyers of the area involved in the forthcoming election is an integral part of the system. One of the objections voiced against non-competitive election is that it is no election at all, so that there is no effective way to remove, at the polls, an undesirable judge. Since the lawyers of the area involved would be the ones most familiar with the performance of a particular judge, the formal expression of their opinion in a bar poll and the requirement that its results be publicized, is considered to be extremely effective as a basis for generating public opinion against continuance in office of a judge whom the bar does not consider deserving of retention in office on the basis of his performance during the probationary period.

The balance of Section 10 makes the electorate voting on retention of a trial court judge the voters of the area in which the judge was required to reside when appointed. With respect to the two appellate courts, the residence requirements will be by judicial circuits, but the election will be by the voters of the entire State. Since the election is non-competitive, it was not considered that the

political risk was greatly increased by requiring election for appellate judges in an area larger than that in which they were required to reside when appointed, and it was considered desirable that the voters of the State as a whole pass on those judges whose decisions will make law for the State as a whole.

Section 11. Retirement of Judges. Each judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of that court, may authorize retired judges to perform temporary judicial duties in any court.

Comment:

This section covers compulsory retirement and the use of retired judges.

The present Constitution requires retirement at age 70 (Article 4, Section 3). The provision has been criticized by some as imposing "constitutional senility," and as automatically depriving the State of the services of highly qualified men who in particular instances are generally considered to be fully capable of continued valuable judicial service. The present Constitution does not provide for any service, even on a selective basis, by judges who have retired.

Opponents of continued judicial service after retirement generally contend that there should be a point in time when the present judges should step aside and make way for younger men to take office. They assert that there is a tendency on the part of judges after long service to become set in their ways and to resist

trends toward modernization in judicial administration, in trial techniques or in the evolution of the law itself. They object to use of retired judges even on a selected basis for special cases, because they assert that the chief justice will not be willing to tell a former colleague, who may be urging that he be appointed for limited service, that he is no longer qualified to try and decide cases.

The Committee's recommendation is believed to represent a compromise between these two positions. The mandatory retirement is retained. However, power is provided for the use of retired judges on a selective and individual basis. The power is exercisable only with the approval of the majority of The Supreme Court. This provision is designed to insulate the chief justice from the problems based on personal relations which are advanced in opposition to selected use of retired judges.

Even though the chief justice has broad power to assign judges throughout the unified system, the Committee believes that a power to use retired judges may be a useful tool in judicial administration to help to relieve temporary court congestion without the necessity of creating additional judgeships.

The Maryland State Bar Association, by a relatively close vote, has recommended the use of retired judges only to sit as appellate judges.

Mr. Sykes of the Committee believes that the strong views of the bar should be recognized on this issue and asks to be recorded as opposed to the Committee's recommendation.

Section 12. Compensation of Judges. Each judge shall be compensated for his judicial service solely by the State. The compensation of a judge shall not be reduced during his continuance in office. Provision shall be made by law for the payment of pensions to judges and their surviving spouses. The same compensation, including pensions, shall be paid to all judges of the same court.

No judge shall engage in the practice of law, run for elective office other than the judicial office he holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service.

Comment:

The foregoing provisions are self-explanatory and are designed to bring about both independence and impartiality of the judiciary. The section embodies the near unanimous recommendation of all interested persons who expressed their views to the Committee that the practice of supplementation of judicial salaries by local subdivisions be prohibited.

Section 13. Removal of Judges. The Supreme Court shall have power to remove any judge from office for misconduct in office or persistent failure to perform the duties of his office, or to retire any judge for

disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any proceeding involving his own removal or retirement. The Supreme Court may by Rule or Order implement and enforce this section. A judge retired under this section shall have the rights and privileges provided by law. A judge removed under this section, and his surviving spouse, shall have the benefits, pension or retirement allowance otherwise accruing from his judicial service to the extent, if any, provided by the order of removal.

Comment:

The recommendations concerning removal are predicated on the belief that impeachment or legislative redress are procedures too cumbersome to deal effectively with the problem of the judge who should be removed from office. Under the present Constitution, removal requires a two-thirds vote of both houses of the General Assembly which must, of course, be in session even to begin the procedure.

A constitutional amendment is proposed for ratification this year which would create a Commission on Judicial Disabilities for the review of these problems, and which would make recommendations for removal or retirement to the General Assembly. (See proposed Sections 4A and 4B of Article 4.) A two-thirds vote of both houses would be required. This presently pending constitutional

amendment is in turn based upon a recommendation of the Maryland State Bar Association except that the State Bar proposed placing the power of removal in the Court of Appeals.

This Committee recommends that the power be placed in The Supreme Court, since the problem is basically one of internal administration and since a situation of such seriousness as to prompt removal proceedings should be dealt with by a procedure which is available at all times. The grounds for removal are misconduct in office or persistent failure to perform the duties of the judicial office. The Committee considered that misconduct in office is a term broader than misconduct in the performance of judicial duties, and encompasses misconduct which affects the performance of judicial duties. For this reason one of the grounds in the presently proposed constitutional amendment has been eliminated, namely, "conduct which shall prejudice the proper administration of justice." The Committee considered the quoted language was so broad that it could be used to affect the independence of the judge.

Power is vested in The Supreme Court to provide by Rule or Order for both implementation and enforcement of this section. It is intended by these provisions that The Supreme Court could adopt rules establishing a commission of mixed lay, lawyer and judicial composition for the purpose of reviewing complaints against judges and for recommending further formal proceedings if justified by the evidence. It is also intended that The Supreme Court be able to grant immunity to witnesses and compel the attendance of witnesses and the production of evidence.

The Committee's recommendation as to the effect of an order for removal gives flexibility to The Supreme Court to determine to what extent, if at all, any accrued pension should be paid to the judge, or to his spouse. The pending constitutional amendment provides for an absolute termination of any retirement benefits on removal. The Committee considered that this automatic forfeiture may be too harsh in a given case, particularly as to the spouse, and recommends that the matter be left to the discretion of The Supreme Court on a case by case basis.

Section 14. Clerks of Court. The chief justice of The Supreme Court and the chief judges of the Appellate, Superior and District Courts shall each appoint a chief clerk of their respective courts who shall serve at the pleasure of the appointing judge.

There shall be a chief clerk of The Superior Court in each county and for each division of The District Court. Their appointment and terms shall be governed by Rule.

Comment:

This proposal recommends a substantial change. Clerks of the Circuit Courts are now elected. The clerk of the present Court of Appeals is appointed by the court. The proposal for the Court of Special Appeals is that its clerk be appointed by that court. In both instances the term is at the pleasure of the court. Clerks of People's Courts and those performing the functions of clerk for trial magistrates are generally appointed.

The recommendation here is based on the policy that clerks of court are an arm of the court and should be responsible to the judiciary. An overall statewide clerk as chief clerk is recommended for each of the uniform statewide trial courts. There will be local deputies whose selection and tenure will be determined by Rule. This flexibility is necessary because the administrative organization of The Superior Court will be determined by Rule and the specific districting for the divisions of The District Court will be determined by law.

Since Orphan's Courts are abolished, no express reference is made to the office of Register of Wills. The duties of that office as presently constituted would be performed as determined by Rule. The Committee anticipates that these duties would be handled in a special division of the clerk's office.

Respectfully submitted,

Committee on the Judiciary Departm

State	Appellate Courts			Major Trial Courts				Courts of Limited Jurisdiction				
	Court of Last Resort	Intermediate Appellate Court	Chancery Court	Circuit Court	District Court	Superior Court	Other Trial Courts	Probate Court	County Court	Municipal Court	Magistrate or Police Court	Other Courts
Alabama	6	6		6				6			4	
Alaska	10										4 ^b	
Arizona	6	6						4	2	2-4	2	2 ^c
Arkansas	8		6	4				6		6	6	
California	12	12							4			
Colorado	10				6							
Connecticut	8							8	4			4 ^d
Delaware	12		12					12		12	4, 12 ^c	6 ^e
Florida	6	6		6				4-6 ^g	4	2-4	4	12 ^{e, h}
Georgia	6	6						4-8	4	1-4	4	4 ^c
Hawaii	7			6						2		6 ⁱ
Idaho	6				4				2	2	2	
Illinois	10	10		6					j	j	j	4 ^e
Indiana	6	4		6				4	4 ^k	4	4	4 ^l
Iowa	8				6					4	2	4
Kansas	6				4				2	2	2	
Kentucky	8			6								6-8 ^a
Louisiana	14	12			6 ^m					4-6 ⁿ	4	7 ^l
Maine	7							7				4 ^a
Maryland	15			15					4	8-10 ^p	2	Life ^q
Massachusetts	Life				Life ^r	15 ^o		Life	Life	Life	4	Life ^s
Michigan	8	6		6		6 ^t		6		6	4	6 ^c
Minnesota	6				6			4		4	2	u
Mississippi	8		4	4					4		4	4 ^v
Missouri	12	12		6				4 ^c	4		4	4
Montana	6				4					2	2	
Nebraska	6				6				4	4	2	6 ^w
Nevada	6				4					4	2	
New Hampshire	To age 70							To age 70	To age 70	To age 70	To age 70	To age 70
New Jersey	7 with reappointment for life	7 with reappointment for life						To age 70 with 5 ^x reappointment for life		To age 70 with 5 ^x reappointment for life		To age 70 with 5 ^y reappointment for life

(in years)

State	Appellate Courts		Major Trial Courts		Courts of Limited Jurisdiction				
	Court of Last Resort	Intermediate Appellate Court	Chancery Court	Circuit Court	District Court	Superior Court	Other Trial Courts	Probate Court	County Court
New Mexico	8				6			2	2
New York	14	5 ²				6 ^w 14 ^{aa}		4	4
North Carolina	3					8		2-5	2 ^a
North Dakota	10				6			2-4	2-4
Ohio	6	6				6 ^c		4	6 ^e
Oklahoma	6				4	4		2	4 ^e 6 ^a
Oregon	6			6				6	6 ¹
Pennsylvania	21	10				10 ^c		6	6
Puerto Rico	To age 70				12			6	8 ¹
Rhode Island	Life				Life			4	3 ^{1, f}
South Carolina	10		4					2-4	2-4
South Dakota	6		4					ab	ab
Tennessee	8	3	3	8		8 ^a		6	8 ^{ad}
Texas	6	6			4			4	6 ^e
Utah	10				6			6	4
Vermont	2					2 ^x 8 ^{af}	2	2	2
Virginia	12		3	8				4	4-6 ^e
Washington	6					4		4	4
West Virginia	12		3					6	6-8 ^{ad}
Wisconsin	10		6					2	2
Wyoming	8				6			2	2

a. At pleasure of Presiding Judge of Superior Court.

b. For justices of the peace. Terms of city and town magistrates provided by charter or ordinance.

c. Courts of common pleas. In Missouri, now presided over by circuit judges.

d. Circuit Court.

e. Juvenile courts; in Florida, New Jersey and Virginia, juvenile and domestic relations courts.

f. Family courts. In Rhode Island, judges serve during "good behavior."

g. Courts of record.

- h. Small claims courts.
- i. District courts.
- j. Effective January 1, 1964, part of circuit court system.
- k. Criminal courts.
- l. Statutory courts; superior, district, civil, small claims.
- m. Judges in New Orleans serve 12 years.
- n. Judges in Baton Rouge serve four years.
- o. Supreme Bench of Baltimore.
- p. People's Courts of Baltimore City and Montgomery County; Municipal Court of Baltimore City.
- q. People's Court of Baltimore County.
- r. Includes Boston Juvenile Court.
- s. Land Court of Massachusetts.
- t. Recorder's Court of Detroit.
- u. City courts.
- v. St. Louis Court of Criminal Corrections.
- w. Workmen's Comp. courts; Court of Ind. Relations.
- x. County courts.
- y. County district courts.
- z. Justices are designated for five-year terms while retaining status as elected Supreme Court Justices.
- aa-Supreme Court, to age 70; judges may be certified thereafter for two-year terms, up to age 76.
- ab-Terms not uniform; fixed by General Assembly.
- ac-Township justices and police magistrates, two years; county justices of the peace, four years.
- ad-Six years for county chairmen; terms of county judges fixed by private acts.
- ae-Courts of general sessions.
- af-Corporation, hustings, law and equity courts, law and chancery courts.
- ag-Municipal and police courts variable.
- ah-Common pleas, domestic relations, criminal, intermediate and juvenile courts.

STATE OF MARYLAND

CONSTITUTIONAL CONVENTION COMMISSION

FIFTH REPORT

OF THE

COMMITTEE ON THE JUDICIARY DEPARTMENT

October 14, 1966

RE: REVISED ARTICLE ON THE JUDICIARY DEPARTMENT

There is submitted herewith a revised text of the proposed article on the judiciary department. The revisions have been made in order to comply with the directions of the Commission at the September meeting and also to embody suggestions on style which were made at the Commission meeting. Bracketed matter indicates deletions from the text as set forth in the Fourth Report and underlined matter indicates material which is new to the text as compared to the Fourth Report.

The question of income taxation by the State of salaries of judges is presently covered by Article 3, Section 35A. That section denies exemption from income taxation in terms which are applicable not only to judges but to other public officers. For this reason, the Committee on the Judiciary Department believes that such a provision should be included in a general article, possibly in the article relating to the General Assembly where the present provision is found.

PROPOSED ARTICLE ON THE JUDICIARY DEPARTMENT

Section 1. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system composed of The Supreme Court, The Appellate Court, The Superior Court and The District Court.

Section 2. The Supreme Court.

A. Jurisdiction. The Supreme Court shall be the highest court of the State and shall have the [such] jurisdiction [as] provided by law.

B. Composition. The Supreme Court shall be composed of seven [a chief justice and six associate] justices. Five [Four] justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

Section 3. The Appellate Court.

A. Jurisdiction. The Appellate Court shall have the [such] jurisdiction [as] provided by law.

B. Composition. The Appellate Court shall be composed of [a chief judge and] no fewer than five [four] associate judges, as provided by law. The Appellate Court may sit in panels of no fewer than three judges, as provided exclusively by Rule.

Section 4. The Superior Court.

A. Jurisdiction. The Superior Court shall have [all] original jurisdiction in all judicial proceedings, except as otherwise provided by this Constitution or by law and shall have

such other jurisdiction as is provided by law. Jurisdiction of The Superior Court shall be uniform throughout the State.

B. Composition. The Superior Court shall be composed of the number of judges provided by law who shall be allocated among the counties by law. There shall be at least one Superior Court [a chief judge and no fewer than one associate] judge resident in each county [, as provided by law].

Section 5. The District Court.

A. Jurisdiction. The District Court shall have the [such] original jurisdiction [as] provided by law. Jurisdiction of The District Court shall be uniform throughout the State.

B. Composition. The District Court shall be composed of the number of judges [a chief judge and no fewer than one associate judge resident in each district, as] provided by law. The State shall be divided by law into districts. There shall be a division of The District Court for each district. Each district shall be composed of one or more entire and contiguous counties. There shall be at least one District Court judge resident in each district.

C. Commissioners. There may be commissioners of The District Court in the [such] number[s] and with the [such] qualifications [as] provided exclusively by Rule. Commissioners in a district [They] shall be appointed by and serve at the pleasure of that [a] judge of The District Court who shall be [so] designated exclusively by Rule to appoint commissioners therein. Commissioners may, in accordance with Rule, issue arrest warrants and determine whether and in what amount bail is required.

Section 6 [8]. The Chief Justice. The governor shall designate one of the justices of The Supreme Court to serve as chief justice for the balance of his service on the court or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or during a period when the chief justice is unable to serve as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve upon the associate justice senior in service on The Supreme Court.

Section 7 [6]. Administration.

The chief justice of The Supreme Court shall be the administrative head of the judicial system. He shall have the power to assign any judge to sit temporarily in any court.

The chief justice of The Supreme Court shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judges of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. [The chief judge of The Superior Court shall, under the direction of the chief justice, prepare and transmit to the governor the estimate of expenditures of the judicial department, which shall be included in the budget without revision.]

The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court. The

chief judge of The District Court shall assist the chief judge of The Superior Court in the administration of The District Court.

Section 8 [7]. Rule-Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations: (1) governing practice and procedure in all courts, (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial department and officers of the executive department to the extent that their duties directly relate to the enforcement of judicial orders. In the event [of conflict between such] a Rule and a [any] provision of an[y] act of the General Assembly conflict in a regulation of any of the three foregoing types, the Rule, if adopted or readopted after the enactment of the statutory provision, shall be paramount over the prior [act] statutory provision to the extent of the conflict.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

Section 9. Selection of Judges.

A. Eligibility. (Alternate No. 1 -- preferred by Commission)

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in the county where the vacancy exists. To be eligible for nomination and appointment [or] to The District Court, a person shall be a resident of the [county or] district[, respectively,] where the vacancy exists.

A. Eligibility. (Alternate No. 2)

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

[The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.]

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in the county where the vacancy exists. To be eligible for nomination and appointment [or] to The District Court, a person shall be a resident of the [county or] district[, respectively,] where the vacancy exists.

A. Eligibility. (Alternate No. 3)

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court or to The District Court, a person shall be a resident of the county or district, respectively, where the vacancy exists.

A. Eligibility. (Alternate No. 4)

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in, or have his principal office for the practice of law in, the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in the county where the

vacancy exists. To be eligible for nomination and appointment [or] to The District Court, a person shall be a resident of the [county or district[, respectively,] where the vacancy exists.

B. Nomination and Appointment.

A vacancy in a judicial office [the office of judge] shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make the nominations for a vacancy not more than 30 days prior to nor more than 60 days after the vacancy occurs. If the governor fails to make the appointment within 60 days of being advised of the list of nominees, the governor's power to make the appointment shall cease and the chief justice of The Supreme Court shall appoint one of the nominees.

C. Nominating Commissions.

(1) Appellate Courts Nominating Commission.

Nominations for vacancies on The Supreme Court and on The Appellate Court shall be made by the Appellate Courts Nominating Commission. The commission shall be composed of six lay persons, six lawyers, and the chief justice of The Supreme Court. The terms of the non-judicial members shall be four years.

(2) Trial Courts Nominating Commissions.

Nominations for vacancies on The Superior Court and on The District Court shall be made by a trial courts nominating commission. The number of trial courts nominating commissions shall be provided by law. Each commission shall make nominations for vacancies in the office of Superior Court judge in one or more

counties, or for vacancies in the office of District Court judge in one or more districts, or both, as provided by law. Each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge. The terms of the non-judicial members shall be provided by law.

(3) Lawyer Members of Nominating Commissions.

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which such commission is established. Elections for lawyer members of nominating commissions, including the qualifications of lawyer members and of their electors, shall be governed exclusively by Rule.

(4) Lay Members of Nominating Commissions.

Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the voters of the State. Lay members of each trial courts nominating commission shall be appointed [chosen] by the governor from the voters of the area for which such commission is established.

(5) Rules Governing Nominating Commissions.

A nominating commission may act only on the concurrence of a majority of its current membership. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any state or local public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no compensation for their services.

Section 10. Term of Office of Judges. At the next general election following the expiration of two years from the date of appointment, and every ten [fourteen] years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each justice of The Supreme Court and each judge of The Appellate Court shall be subject to approval or rejection by the electorate of [throughout] the entire State. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate, respectively, of the county or district for [in] which the office then exists [he was required to reside when appointed]. Provision shall be made exclusively by Rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term and for publication of the results thereof. In the event of the rejection of any judge by the electorate, the office shall be vacant.

Section 11. Retirement of Judges. Each judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of that court, may authorize retired judges to perform temporary judicial duties in any court.

Section 12. Compensation of Judges. Each judge shall be compensated for his judicial service solely by the State. The compensation of a judge shall not be reduced during his continuance in office. Provision shall be made by law for the payment of pensions based on length of service to judges and their surviving

spouses. The same compensation, including pensions, shall be paid to all judges of the same court, except that the same reduction in compensation of the judges of the same court may be made applicable to all judges thereof appointed after the effective date of the reduction.

No judge shall engage in the practice of law, run for elective office other than the judicial office he holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service.

Section 13. Removal of Judges. The Supreme Court shall have power to remove any judge from office upon a finding, after hearing, of [for] misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding, after hearing, of [for] disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing [proceeding] involving his own removal or retirement. Implementation and enforcement of this section may be [The Supreme Court may] by Rule or Order of The Supreme Court exclusively [implement and enforce this section]. A judge retired under this section shall have the rights and privileges provided by law. A judge removed under this section, and his surviving spouse, shall have the rights and privileges [benefits, pension or retirement allowance otherwise] accruing from his judicial service only to the extent[, if any,] provided by the order of removal.

Section 14. Clerks of Court. The chief justice of The Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of their respective courts who shall serve at the pleasure of the appointing judge.

There shall be a chief deputy clerk of The Superior Court in each county and for each division of The District Court. Their appointment and terms shall be governed exclusively by Rule.

CONSTITUTIONAL CONVENTION COMMISSION

SIXTH REPORT
OF THE
COMMITTEE ON THE JUDICIARY DEPARTMENT

October 24, 1966

RE: REVISED ARTICLE ON THE JUDICIARY DEPARTMENT

There is submitted herewith a revised text of the proposed article on the judiciary department. The revisions have been made in order to comply with the directions of the Commission at its October meeting held in Baltimore. Double underlining indicates new material as compared to the Fifth Report, and a line has been drawn through deletions from the text as set forth in the Fifth Report. These changes occur on pages 2, 3, 5, 10 and 11. (As you will remember, in the Fifth Report, bracketed matter indicated deletions from the text of the Fourth Report and underlining indicated new material as compared to the Fourth Report.)

PROPOSED ARTICLE ON THE JUDICIARY DEPARTMENT

Section 1. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system composed of The Supreme Court, The Appellate Court, The Superior Court and The District Court.

Section 2. The Supreme Court.

A. Jurisdiction. The Supreme Court shall be the highest court of the State and shall have the [such] jurisdiction [as] provided by law.

B. Composition. The Supreme Court shall be composed of seven [a chief justice and six associate] justices. Five [Four] justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

Section 3. The Appellate Court.

A. Jurisdiction. The Appellate Court shall have the [such] jurisdiction [as] provided by law.

B. Composition. The Appellate Court shall be composed of [a chief judge and] no fewer than five [four] associate judges, as provided by law. The Appellate Court may sit in panels of no fewer than three judges, as provided exclusively by Rule.

Section 4. The Superior Court.

A. Jurisdiction. The Superior Court shall have [all] original jurisdiction in all judicial proceedings, except as otherwise provided by this Constitution or by law and shall have such other jurisdiction as is provided by law. Jurisdiction of The Superior Court shall be uniform throughout the State.

B. Composition. The Superior Court shall be composed of the number of judges provided by law ~~who~~ which shall be allocated among the counties by law. There shall be at least one Superior Court [a chief judge and no fewer than one associate] judge resident in each county [, as provided by law].

Section 5. The District Court.

A. Jurisdiction. The District Court shall have the [such] original jurisdiction [as] provided by law. Jurisdiction of The District Court shall be uniform throughout the State.

B. Composition. The District Court shall be composed of the number of judges [a chief judge and no fewer than one associate judge resident in each district, as] provided by law. The State shall be divided by law into districts. ~~There shall be a division of The District Court for each district.~~ Each district shall be composed of one or more entire and contiguous counties. There shall be at least one District Court judge resident in each district.

C. Commissioners. There may be commissioners of The District Court in the [such] number[s] and with the [such] qualifications [as] provided exclusively by Rule. Commissioners in a district [They] shall be appointed by and serve at the pleasure of that [a] judge of The District Court who shall be [so] designated exclusively by Rule to appoint commissioners therein. Commissioners may, in accordance with Rule, issue arrest warrants and determine whether and in what amount bail is required.

Section 6 [8]. The Chief Justice. The governor shall designate one of the justices of The Supreme Court to serve as chief justice for the balance of his service on the court or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or during a period when the chief justice is unable to serve as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve upon the associate justice senior in service on The Supreme Court.

Section 7 [6]. Administration.

The chief justice of The Supreme Court shall be the administrative head of the judicial system. He shall have the power to assign any judge to sit temporarily in any court.

The chief justice of The Supreme Court shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judges of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice. [The chief judge of The Superior Court shall, under the direction of the chief justice, prepare and transmit to the governor the estimate of expenditures of the judicial department, which shall be included in the budget without revision.]

The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court. The chief judge of The District Court shall assist the chief judge of The Superior Court in the administration of The District Court.

Section 8 [7]. Rule-Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations: (1) governing practice and procedure in all courts, (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial department and officers of the executive department to the extent that their

duties directly relate to the enforcement of judicial orders. In the event [of conflict between such] a Rule and a [any] provision of an[y] act of the General Assembly conflict in a regulation of any of the three foregoing classes types, the Rule, if adopted or readopted after the enactment of the statutory provision, shall be paramount over the prior [act] statutory provision to the extent of the conflict.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

Section 9. Selection of Judges.

A. Eligibility. (Alternate No. 1 -- preferred adopted by Commission)

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment [or] to The District Court, a person shall be a resident of the [county or] district[, respectively,] where the vacancy exists.

A. Eligibility. (Alternate No. 2)

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

[The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.]

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment [or] to The District Court, a person shall be a resident of the [county or] district[, respectively,] where the vacancy exists.

A. Eligibility. (Alternate No. 3)

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to the Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court or to The District Court, a person shall be a resident of the county or district, respectively, where the vacancy exists.

A. Eligibility. (Alternate No. 4)

To be eligible for nomination and appointment to a judicial office, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in, or have his principal office for the practice of law in, the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment [or] to The District Court, a person shall be a resident of the [county or] district[, respectively,] where the vacancy exists.

B. Nomination and Appointment.

A vacancy in a judicial office [the office of judge] shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make the nominations for a vacancy not more than 30 days prior to nor more than 60 days after the vacancy occurs. If the governor fails to make the appointment within 60 days of being advised of the list of nominees, the governor's power to make the appointment shall cease and the chief justice of The Supreme Court shall appoint one of the nominees.

C. Nominating Commissions.

(1) Appellate Courts Nominating Commission.

Nominations for vacancies on The Supreme Court and on The Appellate Court shall be made by the Appellate Courts Nominating Commission. The commission shall be composed of six lay persons, six lawyers, and the chief justice of The Supreme Court. The terms of the non-judicial members shall be four years.

(2) Trial Courts Nominating Commissions.

Nominations for vacancies on The Superior Court and on The District Court shall be made by a trial courts nominating commission. The number of trial courts nominating commissions shall be provided by law. Each commission shall make nominations for vacancies in the office of Superior Court judge in one or more counties, or for vacancies in the office of District Court judge in one or more districts, or both, as provided by law. Each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge. The terms of the non-judicial members shall be provided by law.

(3) Lawyer Members of Nominating Commissions.

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which such commission is established. Elections for lawyer members of nominating commissions, including the qualifications of lawyer members and of their electors, shall be governed exclusively by Rule.

(4) *Lay Members of Nominating Commissions.*

Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the voters of the State. Lay members of each trial courts nominating commission shall be appointed [chosen] by the governor from the voters of the area for which such commission is established.

(5) *Rules Governing Nominating Commissions.*

A nominating commission may act only on the concurrence of a majority of its current membership. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any state or local public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no compensation for their services.

Section 10. Term of Office of Judges. At the next general election following the expiration of two years from the date of appointment, and every ten [fourteen] years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each justice of The Supreme Court and each judge of The Appellate Court shall be subject to approval or rejection by the electorate of [throughout] the entire State. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate, respectively, of the county or district for [in] which the office then exists [he was required to reside when appointed]. Provision shall be made exclusively by Rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to

whether he should be retained in office for a full or additional term and for publication of the results thereof. In the event of the rejection of any judge by the electorate, the office shall be vacant.

Section 11. Retirement of Judges. Each judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of that court, may authorize retired judges to perform temporary judicial duties in any court.

~~Section 12. -- Compensation of Judges. -- Each judge shall be compensated for his judicial services solely by the State. -- The compensation of a judge shall not be reduced during his continuance in office. -- Provision shall be made by law for the payment of pensions based on length of service to judges and their surviving spouses. -- The same compensation, including pensions, shall be paid to all judges of the same court, except that the same reduction in compensation of the judges of the same court may be made applicable to all judges thereof appointed after the effective date of the reduction.~~

~~No judge shall engage in the practice of law, run for elective office other than the judicial office he holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service.~~

Section 12. Compensation of Judges.

Each judge shall be compensated for his judicial service solely by the State. The salary of a judge shall not be reduced

during his continuance in office. Any provision for the payment of a pension to a retired judge or his surviving spouse, in effect during his continuance in office, shall not be reduced. The same compensation, including any pension based upon length of service, shall be paid to all judges of the same court, except that a uniform reduction in compensation of judges of the same court may be made applicable to all judges thereof appointed after the effective date of the reduction.

No judge during his continuance in office, and no retired judge while receiving any pension, shall engage in the practice of law, run for elective office other than a judicial office he may then hold, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service.

Section 13. Removal of Judges. The Supreme Court shall have power to remove any judge from office upon a finding, after hearing, of [for] misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding, after hearing, of [for] disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing [proceeding] involving his own removal or retirement. Implementation and enforcement of this section may be [The Supreme Court may] by Rule or Order of The Supreme Court exclusively [implement and enforce this section]. A judge retired under this section shall

have the rights and privileges provided by law. A judge removed under this section, and his surviving spouse, shall have the rights and privileges [benefits, pension or retirement allowance otherwise] accruing from his judicial service only to the extent[, if any,] provided by the order of removal.

Section 14. Clerks of Court. The chief justice of The Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of their respective courts who shall serve at the pleasure of the appointing judge.

There shall be a chief deputy clerk of The Superior Court in each county and for each division of The District Court. Their appointment and terms shall be governed exclusively by Rule.

Respectfully submitted,

Committee on the Judiciary Department

CONSTITUTIONAL CONVENTION COMMISSION

SEVENTH REPORT
OF THE
COMMITTEE ON THE JUDICIARY DEPARTMENT

December 3, 1966

RE: REVISED ARTICLE ON THE JUDICIARY DEPARTMENT

There is submitted herewith a revised text of the proposed article on the judiciary department. The basic text incorporates all changes made through the Sixth Report of the Committee on the Judiciary Department, as approved by the Commission at its meeting on October 25, 1966. Underlining indicates new material as compared to the Sixth Report, and a line has been drawn through deletions from the text as set forth in the Sixth Report.

The Committee has voted to recommend that the Commission reconsider the term of judges. This has been done so that the Commission can consider the objections of the special committees of the Maryland State Bar Association and the Judicial Conference to the 10-year term.

PROPOSED ARTICLE ON THE JUDICIARY DEPARTMENT

Section 1. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system composed of The Supreme Court, The Appellate Court, The Superior Court and The District Court.

Section 2. The Supreme Court.

A. Jurisdiction. The Supreme Court shall be the highest court of the State and shall have the jurisdiction provided by law.

B. Composition. The Supreme Court shall be composed of seven justices. Five justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

Section 3. The Appellate Court.

A. Jurisdiction. The Appellate Court shall have the jurisdiction provided by law.

B. Composition. The Appellate Court shall be composed of no fewer than five ~~associate~~ judges, as provided by law. The Appellate Court may sit in panels of no fewer than three judges, as provided exclusively by Rule.

Section 4. The Superior Court.

A. Jurisdiction. The Superior Court shall have original jurisdiction in all judicial proceedings, except as otherwise provided by this Constitution or by law and shall have such other jurisdiction as is provided by law. Jurisdiction of The Superior Court shall be uniform throughout the State.

B. Composition. The Superior Court shall be composed of the number of judges provided by law which shall be allocated among the counties by law. There shall be at least one Superior Court judge resident in each county.

Section 5. The District Court.

A. Jurisdiction. The District Court shall have the original jurisdiction provided by law. Jurisdiction of The District Court shall

be uniform throughout the State.

B. *Composition.* The District Court shall be composed of the number of judges provided by law. The State shall be divided by law into districts. Each district shall be composed of one or more entire and contiguous counties. There shall be at least one District Court judge resident in each district.

C. *Commissioners.* There may be commissioners of The District Court in the number and with the qualifications provided exclusively by Rule. Commissioners in a district shall be appointed by and serve at the pleasure of that judge of The District Court who shall be designated exclusively by Rule to appoint commissioners therein. ~~Commissioners may, in accordance with Rule, issue arrest warrants and determine whether and in what amount bail is required.~~ exercise only such powers with respect to arrest, bail, collateral and incarceration pending hearing as may be prescribed exclusively by Rule.

Section 6. The Chief Justice. The governor shall designate one of the justices of The Supreme Court to serve as chief justice for the balance of his service on the court or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or during a period when the chief justice is unable to serve as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve upon the associate justice senior in service on The Supreme Court.

Section 7. Administration.

The chief justice of The Supreme Court shall be the administrative head of the judicial system. He shall have the power

to assign any judge to sit temporarily in any court.

The chief justice of The Supreme Court shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judges of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice.

The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court. The chief judge of The District Court shall assist the chief judge of The Superior Court in the administration of The District Court.

Section 8. Rule-Making Power.

The Supreme Court by Rule and the General Assembly by law shall have concurrent power to prescribe regulations: (1) governing practice and procedure in all courts, (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial department and officers of the executive department to the extent that their duties directly relate to the enforcement of judicial orders. In the event a Rule and a provision of an act of the General Assembly conflict in a regulation of any of the three foregoing classes, the Rule, if adopted or readopted after the enactment of the statutory provision, shall be paramount over the prior statutory provision to the extent of the conflict.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

Section 9. Selection of Judges.

A. Eligibility. (Alternate No. 1 -- adopted by Commission)

To be eligible for nomination and appointment to a ~~judicial~~ the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

A. Eligibility. (Alternate No. 2)

To be eligible for nomination and appointment to a ~~judicial~~ the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

A. Eligibility. (Alternate No. 3)

To be eligible for nomination and appointment to a ~~judicial~~ the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court or to The District Court, a person shall be a resident of the county or district, respectively, where the vacancy exists.

A. Eligibility. (Alternate No. 4)

To be eligible for nomination and appointment to a ~~judicial~~ the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in, or have his principal office for the practice of law in, the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

B. *Nomination and Appointment.*

A vacancy in ~~a-judicial-office~~ the office of judge shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make the nominations for a vacancy not more than 30 days prior to nor more than 60 days after the vacancy occurs. If the governor fails to make the appointment within 60 days of being advised of the list of nominees, the governor's power to make the appointment shall cease and the chief justice of The Supreme Court shall appoint one of the nominees.

C. *Nominating Commissions.*

(1) *Appellate Courts Nominating Commission.*

Nominations for vacancies on The Supreme Court and on The Appellate Court shall be made by the Appellate Courts Nominating Commission. The commission shall be composed of six lay persons, six lawyers, and the chief justice of The Supreme Court. The terms of the non-judicial members shall be four years.

(2) *Trial Courts Nominating Commissions.*

Nominations for vacancies on The Superior Court and on The District Court shall be made by a trial courts nominating commission. The number of trial courts nominating commissions shall be provided by law. Each commission shall make nominations for vacancies in the office of Superior Court judge in one or more counties, or for vacancies in the office of District Court judge in one or more districts, or both, as provided by law. Each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge. The terms of the non-judicial members shall be provided by law.

(3) *Lawyer Members of Nominating Commissions.*

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which such commission is established. Elections for lawyer members of nominating commissions, including the qualifications of lawyer members and of their electors, shall be governed exclusively by Rule.

(4) *Lay Members of Nominating Commissions.*

Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the voters of the State. Lay members of each trial courts nominating commission shall be appointed by the governor from the voters of the area for which such commission is established.

(5) *Rules Governing Nominating Commissions.*

A nominating commission may act only on the concurrence of a majority of its current membership. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any state or local public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no compensation for their services.

Section 10. Term of Office of Judges. At the next general election following the expiration of two years from the date of appointment, and every ten years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each justice of The Supreme Court and each judge of

The Appellate Court shall be subject to approval or rejection by the electorate of the entire State. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate, respectively, of the county or district for which the office then exists. Provision ~~shall~~ may be made exclusively by Rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term and for publication of the results thereof. In the event of the rejection of any judge by the electorate, the office shall be vacant.

Section 11. Retirement of Judges. Each judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of that court, may authorize retired judges temporarily to perform ~~temporary~~ judicial duties in any court.

Section 12. Compensation of Judges.

Each judge shall be compensated for his judicial service solely by the State. The salary of a judge shall not be reduced during his continuance in office. Any provision for the payment of a pension to a retired judge or his surviving spouse, in effect during his continuance in office, shall not be reduced. The same compensation, including any pension based upon length of service, shall be paid to all judges of the same court, except that a uniform reduction in compensation of judges of the same court may be made applicable to all judges thereof appointed after the effective date of the reduction.

~~No judge during his continuance in office, and no retired judge while receiving any pension, shall engage in the practice of law, run for elective office other than a judicial office he may then hold, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service.~~

No judge during his continuance in office shall engage in the practice of law, run for elective office other than the judicial office he then holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service. No retired judge while engaging in such activities shall be paid any pension for his judicial service.

Section 13. Removal of Judges. The Supreme Court shall have power to remove any judge from office upon a finding, after hearing, of misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding, after hearing, of disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement of this section may be by Rule or Order of The Supreme Court exclusively. A judge retired under this section shall have the rights and privileges provided by law. A judge removed under this section, and his surviving spouse, shall have the rights and privileges accruing from his judicial service only to the extent provided by the order of removal.

Section 14. Clerks of Court. The chief justice of The Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of their respective courts who shall serve at the pleasure of the appointing judge.

There shall be a chief deputy clerk of The Superior Court in each county and ~~for each division of The District Court~~ of The District Court in each district. Their appointment and terms shall be governed exclusively by Rule.

Respectfully submitted,

Committee on the Judiciary
Department

C O N S T I T U T I O N A L C O N V E N T I O N C O M M I S S I O N

N O T I C E

Eighth
THE ~~NINTH~~ (FINAL REPORT), DATED
DECEMBER 27, 1966, OF THE COMMITTEE
ON THE JUDICIARY DEPARTMENT WAS
INADVERTENTLY TITLED THUSLY. IT
REPRESENTS THE EIGHTH REPORT OF
THIS COMMITTEE.

CONSTITUTIONAL CONVENTION COMMISSION

8th
NINTH REPORT

(FINAL REPORT)

OF THE

COMMITTEE ON THE JUDICIARY DEPARTMENT

December 27, 1966

RE: ARTICLE V. JUDICIAL DEPARTMENT

I. GENERAL INTRODUCTION

The proposed Article V on the Judicial Department is basically divided into three parts: the structure of the court system, the administration of the courts within the structure, and the selection and tenure of judges.

The Commission's recommendations with respect to structure provide great flexibility. Only four courts are established. The types of cases which they will hear and the extent of review which the initial decision in any given case will have are to be determined by law.

Broad powers of administration over the court system are given to the judicial department, principally to the highest court and its chief justice.

In an otherwise general article, a detailed procedure for the selection of judges is set forth. The governor is restricted in making judicial appointments to a limited number of nominees, who will be proposed by a nonpartisan commission. This procedure, coupled with periodic noncompetitive elections for continuation in office

and power in the highest court to remove members of the judiciary for misconduct, is designed to obtain the best qualified persons for judicial service, to have them independent and impartial during their service, and to permit expeditious removal where necessary.

II. PROPOSED ARTICLE V.

ARTICLE V.

JUDICIAL DEPARTMENT

Section 5.01. The Judicial Power.

The judicial power of the State is vested exclusively in a unified judicial system composed of The Supreme Court, The Appellate Court, The Superior Court and The District Court.

Section 5.02. The Supreme Court.

~~5.02.01.~~ Jurisdiction. The Supreme Court shall be the highest court of the State and shall have the jurisdiction provided by law.

^{.03}
~~5.02.02.~~ Composition. The Supreme Court shall be composed of seven justices. Five justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

^{.04}
~~5.02.03.~~ The Chief Justice. The governor shall designate one of the justices of The Supreme Court to serve as chief justice for the balance of his service on the court or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or during a period when the chief justice is unable to serve as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve upon the associate justice senior in service on The Supreme Court.

5.05
Section ~~5.03.~~ The Appellate Court.

5.06 ~~5.03.01.~~ Jurisdiction. The Appellate Court shall have the jurisdiction provided by law.

~~5.03.02.~~ Composition. The Appellate Court shall be composed of no fewer than five judges, as provided by law. The Appellate Court may sit in panels of no fewer than three judges, as provided ~~exclusively~~ by rule.

3.07 Section ~~5.04.~~ The Superior Court.

~~5.04.01.~~ Jurisdiction. The Superior Court shall have original jurisdiction in all judicial proceedings, except as otherwise provided by this Constitution or by law, and shall have such other jurisdiction as is provided by law. Jurisdiction of The Superior Court shall be uniform throughout the State.

5.08 ~~5.04.02.~~ Composition. The Superior Court shall be composed of the number of judges provided by law which shall be allocated among the counties by law. There shall be at least one Superior Court judge resident in each county. * see 5.13

09 Section ~~5.05.~~ The District Court.

~~5.05.01.~~ Jurisdiction. The District Court shall have the original jurisdiction provided by law. Jurisdiction of The District Court shall be uniform throughout the State.

5.10 ~~5.05.02.~~ Composition. The District Court shall be composed of the number of judges provided by law. The State shall be divided by law into districts. Each district shall be composed of one or more entire and ~~contiguous~~ ^{adjoining} counties. There shall be at least one District Court judge resident in each district.

5.11

~~5.05.03.~~ Commissioners. There may be commissioners of The District Court in the number and with the qualifications provided ~~exclusively~~ by rule. Commissioners in a district shall be appointed by and serve at the pleasure of that judge of The District Court who shall be designated ~~exclusively~~ by rule to appoint commissioners therein. Commissioners may only exercise powers with respect to arrest, bail, collateral and incarceration pending hearing, and only as may be prescribed ~~exclusively~~ by rule.

Section 5.06. Administration. (*moved to end 5.26*)

The chief justice of The Supreme Court shall be the administrative head of the judicial system. He shall have the power to assign any judge to sit temporarily in any court.

The chief justice of The Supreme Court shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judges of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice.

The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court. The chief judge of The District Court shall assist the chief

judge of The Superior Court in the administration of The District Court.

~~Section 5.07.~~ Rule-Making Power. 5.29

The Supreme Court by rule and the General Assembly by law shall have concurrent power to prescribe regulations: (1) governing practice and procedure in all courts, (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial department and officers of the executive department to the extent that their duties directly relate to the enforcement of judicial orders. In the event a rule and a provision of an act of the General Assembly conflict in a regulation of any of the three foregoing classes, the rule, if adopted or re-adopted after the enactment of the statutory provision, shall be paramount over the prior statutory provision to the extent of the conflict.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

Judicial circuits (7 Sup. Ct., 7 appellate Ct.)
~~Section 5.08.~~ Selection of Judges.

~~5.08.01.~~ 5.13 Eligibility. (Alternate No. 1 -- adopted by Commission.)

To be eligible for nomination and appointment to the office of judge, a person shall ^{be a citizen of the state and shall} have been a member of the bar of the State for no fewer than five years next prior to his nomination.

this is now 5.12
(~~The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court.~~) To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, (or shall have his principal office for the practice of law in,) the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

*transposed
but some
substance*

~~5.08.01.~~ Eligibility. (Alternate No. 2.)

To be eligible for nomination and appointment to the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, (or shall have his principal office for the practice of law in,) the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

*"Ruxton
owned,"*

5.13 ~~5.08.01.~~ Eligibility. (Alternate No. 3.)

To be eligible for nomination and appointment to the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court or to The District Court, a person shall be a resident of the county or district, respectively, where the vacancy exists.

5.08.01. Eligibility. (Alternate No. 4.)

To be eligible for nomination and appointment to the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in, or have his principal office for the practice of law in, the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

5.08.02. Nomination and Appointment. A vacancy in the office of judge shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make the nominations for a vacancy not more than 30 days prior to nor more than 60 days after the vacancy occurs. If the governor fails to make the appointment within 60 days of being advised of the list of nominees, the governor's power to make the appointment shall cease and the chief justice of The Supreme Court shall appoint one of the nominees.

15 5.08.03. Appellate Courts Nominating Commission. Nominations for vacancies on The Supreme Court and on The Appellate Court shall be made by the Appellate Courts Nominating Commission. The commission shall be composed of six lay persons, six lawyers and the chief justice of The Supreme Court. The terms of the non-judicial members shall be four years.

5.08.04. Trial Courts Nominating Commissions. Nominations for vacancies on The Superior Court and on The District Court shall be made by a trial courts nominating commission. The number of trial courts nominating commissions shall be provided by law. Each commission shall make nominations for vacancies in the office of Superior Court judge in one or more counties, or for vacancies in the office of District Court judge in one or more districts, or both, as provided by law. Each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge who shall be selected in accordance with law. The terms of the members shall be provided by law.

5.17
5.08.05. Lawyer Members of Nominating Commissions. Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which such commission is established. Elections for lawyer members of nominating commissions, including the qualifications of lawyer members and of their electors, shall be governed ~~exclusively~~ by rule.

5.18
5.08.06. Lay Members of Nominating Commissions. Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the voters of the State. Lay members of each trial courts nominating commission shall be appointed by the governor from the voters of the area for which such commission is established.

5.20
5.08.07. Rules Governing Nominating Commissions. A nominating commission may act only on the concurrence of a majority of its ~~current~~ membership. Each commission shall elect one of its members as chairman. A non-judicial member of a commission may not hold any state or local public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no compensation for their services.

5.21
Section 5.08. Term of Office of Judges.

At the next general election following the expiration of two years from the date of appointment, and every ten years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each

justice of The Supreme Court and each judge of The Appellate Court shall be subject to approval or rejection by the electorate of the entire State. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate, respectively, of the county or district for which the office then exists. Provision may be made exclusively by rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term and for publication of the results thereof. In the event of the rejection of any judge by the electorate, the office shall be vacant.

*see
Bamberger*

S. 22
Section ~~5.10~~. Retirement of Judges.

Each judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of that court, may authorize retired judges temporarily to perform judicial duties in any court.

S. 23
Section ~~5.11~~. Compensation of Judges.

Each judge shall be compensated for his judicial service solely by the State. The salary of a judge shall not be reduced during his continuance in office. Any provision for the payment of a pension to a retired judge or his surviving spouse, in effect during his continuance in office, shall not be reduced. The same compensation, including any pension based upon length of service, shall be paid to all judges of the same court, except that a uniform reduction in compensation of

judges of the same court may be made applicable to all judges thereof appointed after the effective date of the reduction.

5.24 *Restriction of Non-judicial Activities*

No judge during his continuance in office shall engage in the practice of law, run for elective office other than the judicial office he then holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service. No retired judge while engaging in such activities shall be paid any pension for his judicial service.

Section 5.12. Removal of Judges.

The Supreme Court shall have power to remove any judge from office upon a finding, after hearing, of misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding, after hearing, of disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement of this section may be by rule or order of The Supreme Court exclusively. A judge retired under this section shall have the rights and privileges provided by law. A judge removed under this section, and his surviving spouse, shall have the rights and privileges accruing from his judicial service only to the extent provided by the order of removal.

Section 5.13. Clerks of Court.

The chief justice of The Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of their respective courts who shall serve at the pleasure of the appointing judge.

There shall be a chief deputy clerk of The Superior Court in each county and of The District Court in each district. Their appointment and terms shall be governed exclusively by rule.

III. SECTION-BY-SECTION ANALYSIS

Section 5.01. The Judicial Power. The judicial power of the State is vested exclusively in a unified judicial system composed of The Supreme Court, The Appellate Court, The Superior Court and The District Court.

COMMENT:

The proposal for a unified judicial system would for the first time bring all of the courts of the State into one system. It is to be the responsibility of the State to maintain and support this system. The system would be under the administrative control of The Supreme Court and its chief justice. At the present time, particularly at the level of trial magistrate courts, the responsibility for salaries of the judges and the staff and for the quarters is an extremely complicated combination of divided state and local responsibility. Even at the level of the present circuit courts, there is a practice of local supplementation of judicial salaries which precludes uniformity. The local disparities become even

greater when the staffs are considered. With centralized control under a unified system, a more equitable result, based on uniform criteria, should be achieved, and the division of responsibility eliminated. This was one of the strongest recommendations to the Commission by the Maryland State Bar Association's special committee appointed to work with the Commission.

The proposed structure has four levels: a highest court, an intermediate appellate court, a trial court of general jurisdiction and a trial court of limited jurisdiction. The two trial courts will each be a single, statewide court, divided into various divisions.

The Supreme Court will be comparable to the present Court of Appeals. The Appellate Court is comparable to the intermediate court which has been created pursuant to a constitutional amendment adopted at the 1966 general election. The function of a court at this level is to filter the number of cases which would otherwise be appealed to The Supreme Court in a three-tier structure. A court at this level has become necessary by reason of the large increase in the number of appeals, particularly in criminal cases.

The Superior Court is the equivalent of a consolidation into one statewide court of all the ~~present~~ circuit courts of the counties and all of the courts which constitute the Supreme Bench of Baltimore City. At the present time there are three separate courts in Baltimore City exercising general jurisdiction in civil law cases, two separate courts exercising general jurisdiction in equity cases, and a third court exercising general jurisdiction in criminal cases.

The judges at this level in Baltimore City also comprise a seventh court known as the Supreme Bench of Baltimore City which has very limited jurisdiction. The effect of the present proposal is to abolish these separate courts and to consolidate them with the circuit courts of the counties in a single, statewide court.

The District Court is the court at the level of the trial magistrate system, of the people's courts in certain counties, and of the People's Court and Municipal Court in Baltimore City. Under the proposal all these courts will be abolished and jurisdiction at this level will be exercised by full-time judges, who will be attorneys and have tenure. The District Court is, in all material respects, consistent with the proposal overwhelmingly endorsed by the Maryland State Bar Association at its 1966 annual meeting and with recommendations of the Maryland Judicial Conference of Judges of Courts of Limited Jurisdiction.

The present orphans' court jurisdiction which includes the supervision of the administration of estates and of guardianships will, under the Commission's proposal, be vested in The Superior Court. Presently, judges of orphans' courts are not required to be attorneys and often are not. Many of the duties of these courts are ministerial. Because of limited jurisdiction, they often cannot deal with many of the problems which arise in cases before them. The Commission's proposal recognizes the importance of the matters dealt with by orphans' courts and recommends they be handled in the same manner as other complicated legal issues.

The exclusive vesting of judicial power in the four courts is not intended to limit the conferral by law of quasi-judicial functions on administrative agencies.

Finding satisfactory names for the four courts was difficult for the Commission. It attempted to use names which would be descriptive of the function of the court.

Section 5.02. The Supreme Court.

5.02.01. Jurisdiction. The Supreme Court shall be the highest court of the State and shall have the jurisdiction provided by law.

COMMENT:

The jurisdiction of The Supreme Court is to be as provided by law. The Commission had first considered recommending that the court's jurisdiction be only appellate. However, the Commission proposes that original jurisdiction over reapportionment and other special cases be placed in this court, and the General Assembly may want to give it original jurisdiction in other special matters. In any event, the power to remove judges, given to The Supreme Court in section 5.12, may be an exercise of original jurisdiction. Since the jurisdiction is flexible, it was considered necessary to insert a statement that The Supreme Court be the highest court of the State, so that the structure could not be inverted and provision made by law for appeals from The Supreme Court to The Appellate Court.

Some criticism of the recommendation that jurisdiction be provided by law has been made on the ground that it would allow

the General Assembly to strip The Supreme Court of jurisdiction in all cases, except in one insignificant area. The Commission does not think this is a significant danger. The present Constitution (Art. 4, sec. 14) simply provides that the jurisdiction of the Court of Appeals shall be "as prescribed by law." In any event, to prevent a divesting of jurisdiction the constitution would have to include a conferral of appellate jurisdiction in enumerated cases. Such an enumeration creates greater difficulty than the problem it seeks to cure.

5.02.02. Composition. The Supreme Court shall be composed of seven justices. Five justices shall constitute a quorum, and the concurrence of four shall be necessary for the decision of a case.

COMMENT:

Having The Supreme Court composed of seven members carries forward the present size of the Court of Appeals. A specific number is set in the constitution to prevent "packing." A quorum of five, with the concurrence of four necessary for a decision, means that a majority of the entire court will be needed to decide any case. It is not contemplated that a panel system would be used, but rather that the tradition of argument before the full court, which prevailed before the present five-member panel plan, will be restored.

The Commission's research indicates that an express provision for the issuance of writs in aid of the court's jurisdiction is unnecessary since the power is inherent in the court.

5.02.03. *The Chief Justice.* The governor shall designate one of the justices of The Supreme Court to serve as chief justice for the balance of his service on the court or until he resigns the office of chief justice. During a vacancy in the office of chief justice, or during a period when the chief justice is unable to serve as determined by The Supreme Court, all powers and duties of the office of chief justice shall devolve upon the associate justice senior in service on The Supreme Court.

COMMENT:

Since powers and duties are vested in the office of chief justice, it seems necessary to make specific provisions for the devolution of these functions in case of vacancy or incapacity. The question of incapacity is to be determined by the majority of the justices of The Supreme Court.

Section 5.03. The Appellate Court.

5.03.01. *Jurisdiction.* The Appellate Court shall have the jurisdiction provided by law.

COMMENT:

This section, like the constitutional amendment adopted at the 1966 general election, merely authorizes the General Assembly to confer jurisdiction on the court. It is anticipated that the General Assembly will initially confer the same jurisdiction on this court as is provided for the new Court of Special Appeals. However, the jurisdiction could readily be changed by law.

5.03.02. *Composition. The Appellate Court shall be composed of no fewer than five judges, as provided by law. The Appellate Court may sit in panels of no fewer than three judges, as provided exclusively by rule.*

COMMENT:

The initial composition of The Appellate Court at five judges is the same as that of the Court of Special Appeals. The number of judges can be increased by law.

The provision for use of panels is permissive. If panels are not used, a majority of the entire court would be needed for decision. Since panels, however, are expressly permitted without qualification as to the number needed for a decision by a panel, a majority of a panel can render a final judgment. The provision for a panel means not only that as few as three judges may sit in any case at any time, but also that the court may be divided on a regular basis into panels which serve specific geographic areas, or which hear cases of specific subject matters.

Whether, and to what extent, panels will be created is to be determined exclusively by rule of The Supreme Court. This proposal concerning panels stems from the Commission's general approach of leaving matters of internal administration to the rule-making power of The Supreme Court.

Section 5.04. The Superior Court.

5.04.01. *Jurisdiction. The Superior Court shall have original jurisdiction in all judicial proceedings,*

except as otherwise provided by this Constitution or by law, and shall have such other jurisdiction as is provided by law. Jurisdiction of The Superior Court shall be uniform throughout the State.

COMMENT:

The Superior Court is the repository of general jurisdiction in all "judicial proceedings," which include not only cases and controversies, but also present orphans' court proceedings. It is necessary to except jurisdiction "as otherwise provided by this Constitution or by law" to account for the original jurisdiction of The Supreme Court in reapportionment and removal cases and so that the General Assembly may confer original jurisdiction in specified types of cases on The District Court. It is also necessary to provide for "such other jurisdiction as is provided by law" since The Superior Court will undoubtedly be vested by law with jurisdiction in cases which are not an exercise of original jurisdiction, e.g., appeals from The District Court and appeals from certain administrative agencies. In addition, it is unclear if the power to review and revise criminal sentences, which may be placed in The Superior Court, is an exercise of original jurisdiction.

The requirement of uniform jurisdiction supplements a similar provision for The District Court, discussed infra.

5.04.02. *Composition. The Superior Court shall be composed of the number of judges provided by law which shall be allocated among the counties by law. There shall be at least one Superior Court judge resident in each county.*

COMMENT:

The number of judges for The Superior Court would be determined by law. The Commission considered and rejected a suggestion which would limit the power of the General Assembly to create additional judgeships to instances where this is recommended by The Supreme Court or by a judicial council. It was believed that the creation of a unified, statewide court system, with the power to adopt its own rules of administration, and the regular reapportionment of the General Assembly, dictated against such a substantial change, and that the new system should be given an opportunity to function to determine if there would be any problems of constitutional magnitude.

This section requires that there be at least one resident judge of The Superior Court in each county. This provision was strongly urged by the Maryland State Bar Association committee and represents the culmination of a step-by-step process in Maryland which has resulted in a resident judge of the present circuit court: in each county. Each judgeship in The Superior Court will be allocated to a particular county, in order to determine eligibility for nomination and appointment (section 5.08.01) and the area from which the judicial candidate stands for election (section 5.09). Under section 5.13 there will be a chief deputy clerk of The Superior Court in each county. Thus, in many respects, The Superior Court will be very similar to today's circuit courts in the counties.

Section 5.05. The District Court.

5.05.01. Jurisdiction. The District Court shall have the original jurisdiction provided by law. Jurisdiction of The District Court shall be uniform throughout the State.

COMMENT:

Jurisdiction of The District Court, both exclusive and concurrent, will be as provided by law. It is contemplated that this jurisdiction will initially be very similar to that now conferred on the trial magistrates and people's courts, unless present orphans' court jurisdiction, or some portion thereof, should be conferred on The District Court.

The requirement of uniformity of jurisdiction is new. At the present time, particularly in the area of civil jurisdiction, the dollar amount which may be claimed in cases tried before trial magistrates or people's court judges varies widely. Since the proposed court will be a unified one, the jurisdiction should be uniform. The Commission considered proposing that only exclusive jurisdiction be uniform, so that the General Assembly could make local variations in that jurisdiction which would be concurrent with The Superior Court, on the theory that a higher jurisdictional amount might be desirable in metropolitan areas. This proposal failed by a vote of 9 for, 10 against. Arguments advanced in support of the majority position were that a number of judges of courts of limited jurisdiction saw no basis for the distinction and that, since litigants will have the option of using The

District Court or The Superior Court where jurisdiction is concurrent, the same result can be achieved by setting a uniform high limit on concurrent jurisdiction.

5.05.02. Composition. The District Court shall be composed of the number of judges provided by law. The State shall be divided by law into districts. Each district shall be composed of one or more entire and contiguous counties. There shall be at least one District Court judge resident in each district.

COMMENT:

As in the case of The Superior Court the number of judges is to be determined by law. The composition of this court is not oriented to the counties, but to districts to be created by law. The Maryland State Bar Association study concluded that there may not be sufficient judicial business at this level to justify a full-time judge in each county, and that it may be necessary to combine counties in some areas in the formation of districts. Since there is some question of the necessity or desirability of having a district judge in each county, at least initially, the Commission did not consider it advisable to require constitutionally that there be a district judge resident in each county. Rather, the matter should be left to the General Assembly which is better able to reflect the various policy considerations bearing on the formation of districts from time to time. Each district, however, is guaranteed at least one resident judge.

5.05.03. *Commissioners.* There may be commissioners of The District Court in the number and with the qualifications provided exclusively by rule. Commissioners in a district shall be appointed by and serve at the pleasure of that judge of The District Court who shall be designated exclusively by rule to appoint commissioners therein. Commissioners may only exercise such powers with respect to arrest, bail, collateral and incarceration pending hearing, and only as may be prescribed exclusively by rule.

COMMENT:

This provision for commissioners recognizes the need for such officers to supplement the powers of judges of the Superior and District courts to issue arrest warrants and take other action pending grand jury or court action. In some areas there may be enough judges of The District Court and of The Superior Court so that there will be no difficulty in quickly dealing with these matters. However, since these functions must be performed at any time, it is necessary that there be minor judicial officers to serve sections of the State in which there may be a relatively few, or just one district judge. Constitutional authorization for these officers was thought necessary since the functions may well be considered judicial, and all judicial power is covered by the proposed judiciary article.

The number and qualification of commissioners will be determined by rule. The Commission was hesitant to require constitutionally that commissioners be members of the bar, although such a requirement

might be thought desirable. However, there may be areas of the State in which a sufficient number of commissioners could not be obtained from among the members of the bar. Leaving the qualifications to rule allows The Supreme Court to determine when it is appropriate to require all commissioners to be attorneys. Similarly, the number of commissioners will be determined in relation to the number of hearings involved and the number of other judges, particularly district court judges, who are available in the particular locality. The rule provision permits flexibility in this determination.

The commissioners are to be appointed by a judge of The District Court, since the commissioners will work directly under the supervision of judges of The District Court. The determination of which district court judge will make commissioner appointments in a given area is to be made by rule. Since the districts are created and can be changed by law, this will give flexibility. It is a matter of internal administration.

Restricting the commissioners' power to arrest warrants, bail and related matters is a deliberate limitation of their powers. Some suggestions were made that the commissioners should be empowered to hold preliminary hearings (i.e., to determine if there is sufficient evidence against an arrested person to hold him for a trial) and to issue search warrants. It was believed by the Commission and those who consulted with it that these functions are of so serious a nature that they are best left to the judiciary.

The express statement that commissioners exercise their functions "as may be prescribed exclusively by rule" is inserted

out of an abundance of caution to preclude any contention to the contrary.

Section 5.06. Administration.

The chief justice of The Supreme Court shall be the administrative head of the judicial system. He shall have the power to assign any judge to sit temporarily in any court.

The chief justice of The Supreme Court shall designate one Appellate Court judge, one Superior Court judge and one District Court judge as chief judges of their respective courts. Each shall serve as chief judge at the pleasure of the chief justice.

The chief judge of The Superior Court shall assist the chief justice in the administration of the judicial system and shall perform such duties in connection therewith as are assigned him by the chief justice.

The chief judge of The Appellate Court shall assist the chief justice in the administration of The Appellate Court. The chief judge of The District Court shall assist the chief judge of The Superior Court in the administration of The District Court.

Section 5.07. Rule-Making Power.

The Supreme Court by rule and the General Assembly by law shall have concurrent power to prescribe

regulations: (1) governing practice and procedure in all courts, (2) governing the admission of persons to practice before the courts of the State and the discipline of persons admitted, and (3) governing administration of the courts, officers of the judicial department and officers of the executive department to the extent that their duties directly relate to the enforcement of judicial orders. In the event a rule and a provision of an act of the General Assembly conflict in a regulation of any of the three foregoing classes, the rule, if adopted or readopted after the enactment of the statutory provision, shall be paramount over the prior statutory provision to the extent of the conflict.

"Rule" as used in this Article means a rule adopted by The Supreme Court.

COMMENT:

These two sections are the heart of the internal functioning of the judicial system. The power which may be exercised thereunder is intentionally very broad.

The chief justice is the administrative head of the unified judicial system. The Commission has been advised that, although the present Constitution (Article 4, section 18A) contains words of similar import, there has in the past been some question as to the extent of power intended to be conferred. However, after extensive consultation with persons who have been directly involved

in the problems of judicial administration in Maryland for a number of years, the Commission is satisfied that making the chief justice the administrative head of the courts and for the first time giving administrative rule-making power to the highest court will give the chief justice the tools needed for effective judicial administration. Although there may be some "gray area" in delineating between what the chief justice can do as administrative head, and what will require the concurrence of a majority of The Supreme Court for the adoption of a rule, it is believed the problem is more theoretical than practical. In cases where the chief justice has any doubt, or when he ventures into new territory, he will undoubtedly take the matter up with the entire court and rules will be promulgated. It is contemplated that rules will provide for particular divisions of the trial courts to hear special types of cases, such as criminal, traffic, domestic relations, juvenile, general equity, administrative appeals, etc. Such rules would also lay down standards regulating the hours of court, the length of judicial vacations, the conduct of the clerks' offices, the way in which records are to be kept, and requirements relating to the keeping of statistical information and the form of reporting. The rules would undoubtedly also provide for the adoption of local rules by the Superior and District courts for administrative districts.

Section 5.07 recognizes as a matter of policy that the legislative and judicial branches have an interest in practice and procedure, regulation of the bar and administration of the courts. It also recognizes the practical necessity of constitutionally conferring concurrent power since it is almost impossible to draft legislation which is purely substantive and in no way procedural.

Under section 5.07, as under the present Constitution relating to procedural rules (Article 4, sections 18 and 18A), a rule could repeal a statute or a statute could repeal a rule, theoretically in an infinite chain. In the few instances in the past where the General Assembly has proposed or enacted a conflicting law relating to practice and procedure, the matter has been resolved in favor of the rule by consultation between the two branches of government. While it might at first appear that any possible unseemly conflict should be avoided by defining the paramount power, the placing of final power in the General Assembly could expose the years of work on the Maryland Rules or a well ordered plan of administration to disruption based on extraneous considerations.

The Commission concluded that judicial administration, in the broad sense, is primarily the responsibility of the courts and therefore the paramount power to resolve issues relating thereto should not be placed in the General Assembly. Because the public interest and convenience can be deeply involved in these matters and is better expressed by the legislature, the Commission does not believe that such ultimate power should be placed in The Supreme Court. Rather, the proposal is simply to continue the concurrent power arrangement presently applicable to rules of practice and procedure and to admission to the bar, and apply it to the new rules of administration as well. It was believed that the system of concurrent power has worked well in Maryland in the past and there was no reason to believe it would not continue to work well in the future.

Within the above-described framework, the chief justice will directly administer The Supreme Court. A chief judge of The Appellate Court will be appointed by, serve at the pleasure of and report directly to the chief justice.

The position of the chief judge of The Superior Court is created as a constitutional office. This office is essentially that of administrative judge for the system of trial courts. The chief judge of The District Court reports to the chief judge of The Superior Court. It was felt necessary to have a chief judge at both levels because of the great volume of cases at The District Court level and because the problems of disposing of, and keeping records for, cases in The District Court will be different from those in The Superior Court. Both of these positions will in all probability require full-time men, and it may be necessary, by rules of administration, to designate presiding judges for administrative districts of each of the trial courts to handle part of the administrative work of these two courts. The Commission decided in favor of trial judges as administrators as opposed to a career administrator who would be given the title of judge because it felt that only a person who sat as a trial judge can effectively act as administrative judge, particularly in dealing with other judges.

The power to assign judges under section 5.06 is a power conferred on the chief judge of the Court of Appeals in the present Constitution (Article 4, section 18A). However, creation of The District Court broadens the scope of this power. The proposed power to assign is so phrased that a chief justice could assign a judge

of The Superior Court to sit temporarily in The District Court. This power is a necessary consequence, in the Commission's opinion, of the unified judicial system which includes elimination of the trial magistrate system and the creation of the full-time District Court. The Commission doubts that Superior Court judges would be so assigned other than on very rare occasions.

The office of sheriff is not set forth as a constitutional office in the proposed article. The present Constitution (Article 4, section 44) provides that sheriffs have such duties as "fixed by law." These duties vary with the locality and often include law enforcement. Thus it did not seem advisable either to define the duties in a constitution or to require such officers to be wholly under the control of the judicial department. However, section 5.07 provides that officers who execute judicial orders, be they sheriffs, constables or even police officers, are subject to rules of administration as to that aspect of their duties.

Section 5.08. Selection of Judges.

5.08.01. Eligibility. (Alternate No. 1 -- adopted by Commission.)

To be eligible for nomination and appointment to the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to

The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

5.03.01. Eligibility. (Alternate No. 2.)

To be eligible for nomination and appointment to the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

5.03.01. Eligibility. (Alternate No. 3.)

To be eligible for nomination and appointment to the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to his nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court or to The District Court, a person shall be a resident of the county or district, respectively, where the vacancy exists.

5.08.01. Eligibility. (Alternate No. 4.)

To be eligible for nomination and appointment to the office of judge, a person shall have been a member of the bar of the State for no fewer than five years next prior to the nomination.

The State shall be divided by law into circuits of The Supreme Court and into circuits of The Appellate Court. To be eligible for nomination and appointment to The Supreme Court or to The Appellate Court, a person shall reside in, or have his principal office for the practice of law in, the circuit where the vacancy exists.

To be eligible for nomination and appointment to The Superior Court, a person shall be a resident of, or shall have his principal office for the practice of law in, the county where the vacancy exists. To be eligible for nomination and appointment to The District Court, a person shall be a resident of the district where the vacancy exists.

5.08.02. *Nomination and Appointment.* A vacancy in the office of judge shall be filled by the governor from a list of no fewer than two nor more than five eligible persons nominated by a judicial nominating commission. The commission shall make the nominations for a vacancy not more than 30 days prior to nor more than 60 days after the vacancy occurs. If the governor fails to make the appointment within 60 days of being advised of the list of nominees, the governor's power to make the appointment shall cease and the chief justice of The Supreme Court shall appoint one of the nominees.

5.08.03. *Appellate Courts Nominating Commission.* Nominations for vacancies on The Supreme Court and on The Appellate Court shall be made by the Appellate Courts Nominating Commission. The commission shall be composed of six lay persons, six lawyers, and the chief justice of The Supreme Court. The terms of the non-judicial members shall be four years.

5.08.04. *Trial Courts Nominating Commissions.* Nominations for vacancies on The Superior Court and on The District Court shall be made by a trial courts nominating commission. The number of trial courts nominating commissions shall be provided by law. Each commission shall make nominations for vacancies in the office of Superior Court judge in one or more counties, or for

vacancies in the office of District Court judge in one or more districts, or both, as provided by law. Each commission shall have no fewer than five members and shall be composed of an equal number of lay and lawyer members, and a judge who shall be selected in accordance with law. The terms of the members shall be provided by law.

5.08.05. Lawyer Members of Nominating Commissions.

Lawyer members of the Appellate Courts Nominating Commission shall be elected by lawyers throughout the State. Lawyer members of each trial courts nominating commission shall be elected by the lawyers of the area for which such commission is established. Elections for lawyer members of nominating commissions, including the qualifications of lawyer members and of their electors, shall be governed exclusively by rule.

5.08.06. Lay Members of Nominating Commissions.

Lay members of the Appellate Courts Nominating Commission shall be appointed by the governor from the voters of the State. Lay members of each trial courts nominating commission shall be appointed by the governor from the voters of the area for which such commission is established.

5.08.07. Rules Governing Nominating Commissions.

A nominating commission may act only on the concurrence of a majority of its current membership. Each commission shall elect one of its members as chairman. A non-judicial

member of a commission may not hold any state or local public office of profit or office in a political party while a member of a commission and for six months thereafter. The members of a commission shall receive no compensation for their services.

COMMENT:

The Commission recommends the adoption of the American Bar Association plan of judicial selection and retention. Its principal features are appointment from a restricted list proposed by a non-partisan nominating commission and retention by a noncompetitive election. This basic approach has been recommended as well by the American Judicature Society and in the Model State Constitution proposed by the National Municipal League. It is also known as the Missouri plan, since its provisions were first adopted in that state in 1940, where it is now applicable to the highest court, the three intermediate courts of appeal, and to certain of the trial courts in St. Louis and Kansas City. The plan is also in effect in Alaska, Iowa, Kansas, Nebraska, Colorado, Dade County, Florida, Birmingham, Alabama, and Tulsa, Oklahoma. Approval is pending in Vermont and Florida. The noncompetitive election feature is in effect in California and Illinois. Appointment from a list of nominees has been voluntarily used in Pennsylvania, Colorado and New York City. (See 52 ABA Journal No. 6, pp. 539-542.) The plan has been recommended for Maryland by the State Bar Association and the Maryland Judicial Selection Council.

Under the present Maryland Constitution selection is by appointment of the governor whose choice is not restricted by law, although there has been a recent practice, not without exception, of appointment from a list of persons recommended by a bar association. The appointed judge stands for election, at which other candidates can file. He must run in a party primary in which cross-filing is permitted and in a general election in which party labels are not permitted (Article 4, section 5).

Four plans are presented for subsection 5.08.01, relating to eligibility. The Commission proposal was adopted by a vote of 14 to 9.

Under all forms of subsection 5.08.01, the only express standard relating to professional qualifications for judicial appointment is five years of practice. The present Constitution sets no minimum period of practice (Article 4, section 2). The Commission believes that general statements such as distinction for wisdom and integrity are of little significance and that the key to appointment of qualified persons will lie in careful screening by the nominating commission and the willingness of those persons to accept appointment because of the noncompetitive election feature.

The differences between the alternatives lie in the residence requirements. Under all four texts, the appointee to The District Court must reside in the district to which the judicial office is allocated. Under the Commission proposal appointees to the appellate courts must reside in the particular appellate judicial

circuit. However, appointees to The Superior Court may either reside in the particular county or have their principal office for the practice of law there. The latter feature is new and is designed to permit qualified persons to be eligible for that office in a metropolitan center where they have practiced and established their professional reputation, even though they reside in a surrounding suburban county. Opponents of this feature assert that it violates the concept of the "resident judge" who lives among the people whose cases he adjudicates.

Alternate 2 would eliminate any residence requirements for the two appellate courts in order to obtain the best qualified persons without artificial limitations on selection. Proponents of this approach assert that the resident judge concept is not fully applicable to appellate decision. Opponents maintain that it is desirable to require a geographical distribution of the members of an appellate court because knowledge of local variations in practice is important to decision at the appellate level.

Alternate 3 is the same as the Commission proposal but with the elimination of the principal office feature at the Superior Court level. Alternate 4 extends the principal office feature to the two appellate courts.

Under subsection 5.08.02 the number of nominees may be no less than two nor more than five. The flexibility is proposed because the plan is applicable to all courts of the State. Since it is highly conceivable that in some areas at some time there would be very few lawyers whom a commission would conscientiously be able to recommend as qualified for judicial appointment, the

minimum number of nominees is set at two. A maximum of nominees is provided. Absent a relatively low maximum number, the list of nominees might progressively diminish in quality.

A provision is made to fill a vacancy in the event the governor fails to appoint someone within a reasonable period of time. This power is given to the chief justice. It is considered highly unlikely that such situation will arise.

The composition of nominating commissions is based on the general policy that they should have an equal number of lay and lawyer members, and one judge. In recommending the American Bar Association method of selection in the past, the Maryland State Bar Association has specifically voted to have a judge on each nominating commission.

It was recognized by the Commission that many lawyers firmly believe the presence of a judge on a nominating commission will mean that the judge will dominate the deliberations. The Commission concluded that a judge who is interested in dictating nominations is not necessarily precluded from attempting to do so even if he is not a member of a nominating commission. Moreover, establishing the minimum number of members of a trial court nominating commission at five, even though three might be more desirable for other reasons, tends to minimize the influence of the judge. The provision of subsection 5.08.07, that each commission shall elect one of its members as chairman, has the same effect.

Under subsection 5.08.03, a single nominating commission for both appellate courts is created. It is to be statewide in composition. The membership of the Appellate Courts Nominating

Commission is fixed at thirteen since it is considered a sufficiently large number to be representative of the State as a whole for some time to come, and since a specific number tends to prevent "packing." The members' terms are set at four years. The initial terms are to be staggered by the schedule. It was not considered necessary to require districting for the members of this nominating commission. Political realities will compel the governor to appoint lay persons from throughout the State and districting could be required by rule for lawyer members.

The trial court nominating procedure is of necessity more flexible. Subsection 5.08.04 contemplates a number of commissions which will serve given localities. Since The Superior Court is oriented to the counties, there may be a nominating commission for just one county, or the same nominating commission may be the commission for The Superior Court judges in more than one county. Similarly, there may be a nominating commission for but one district of The District Court, or for more than one such district. Since the lines for districts of The District Court must coincide with county lines, the General Assembly may conclude that the same commission will act for a district or districts of The District Court and for a county or number of counties of The Superior Court.

The composition of a trial court nominating commission must be at least five persons, with an equal number of lawyer and lay members and one judge. A relatively low minimum is dictated by the problem of obtaining the best qualified persons for the commission in the less populous areas of the State, since appointment to a commission, by virtue of the provisions of subsection 5.08.07,

carries disqualification for appointment to public office during and for six months after service on a commission.

For the same reason the term of membership on nominating commissions at the trial court level is left to statute. Thus, the terms may have to be shorter in some areas, in order to make the position more attractive, than the terms in other areas.

Subsection 5.08.05, dealing with the lawyer members of a commission, leaves the question of qualifications for these members, their electors and the conduct of these elections to rule.

Subsection 5.08.06 deals with the lay members of commissions who will be appointed by the governor. Since judicial appointments are a matter of broad public concern which is not limited to the bar alone, the public should be represented on nominating commissions.

The prohibition against members of a nominating commission holding public office of profit, or office in a political party, until the seventh month after commission membership, as set forth in subsection 5.08.07, is a necessary provision to give minimum assurance of the integrity of a commission. The prohibition is designed to prevent the making of an arrangement under which a member of a commission is given a political appointment in exchange for his vote in nominating for a judicial office. The National Municipal League suggests that the length of the prohibition run as high as five years. The recommendation here is considered the bare minimum necessary to give any real deterrent value. The provision prohibiting salary or compensation for service on a nominating commission is not intended to prohibit the payment of actual out-of-pocket expenses.

Section 5.09. Term of Office of Judges.

At the next general election following the expiration of two years from the date of appointment, and every ten years thereafter so long as he retains his office, each judge shall be subject to approval or rejection by the electorate. Each justice of The Supreme Court and each judge of The Appellate Court shall be subject to approval or rejection by the electorate of the entire State. Each judge of The Superior Court and of The District Court shall be subject to approval or rejection by the electorate, respectively, of the county or district for which the office then exists. Provision may be made exclusively by rule for the taking of a poll of the lawyers of the area in which the judge is required to stand for election as to whether he should be retained in office for a full or additional term and for publication of the results thereof. In the event of the rejection of any judge by the electorate, the office shall be vacant.

COMMENT:

Following his appointment, each judge (the term judge as used in the article also means justice unless it is otherwise indicated) will serve for from two years to just less than four years before standing for election. This is a "probationary" period during which the bar and public generally can evaluate the performance of the

new judge and determine whether he should be retained in office.

An elective term of ten years is proposed. The term presently provided by the Constitution is fifteen years, which is the longest term of years of any state in the country in which judges are elected. The Commission adopted the ten-year term by a vote of 15-8 and thereby rejected a proposal for a fourteen-year term. A motion to reconsider this vote failed by a substantial margin.

The proponents of a term of fourteen years contend that any reduction from the present fifteen-year term will limit the field of selection for a nominating commission since it will deter the best qualified persons from accepting judicial appointment. They believe that even a noncompetitive election is a risk. They fear that even in a noncompetitive election an organized militant minority in the community can bring about the defeat of a judge and that this possibility can affect the independence of a judge whose term is short in deciding a case which involves a local issue of wide public interest.

The Commission, however, gave weight to the arguments that a noncompetitive election is the equivalent of reelection, unless the judge does not deserve to be retained, and that it is meaningless to provide for an election by the people for continuance in office and then to make the term so long that, in relation to the age at which a person is generally appointed to the bench, the appointment in most cases means a lifetime appointment.

The provision for polls among the lawyers of the area involved in the forthcoming election is permissive. Such a procedure is used in Alaska and Missouri where it has worked well. Since the lawyers of the area involved would be the ones most familiar with the performance of a particular judge, The Supreme Court may conclude that it would be well as a matter of public education to require such polls and publication of the results. However, the Commission was hesitant to make the requirement mandatory because of the lack of experience in Maryland with such a procedure.

The balance of section 5.09 makes the electorate voting on retention of a trial court judge the voters of the area in which the judge was required to reside (or to have practiced) when appointed. The residence requirements for the two appellate courts will be by judicial circuits, but the election will be by the voters of the entire State. Since the election is noncompetitive, it was not considered that the political risk was greatly increased by requiring election from a larger area, and it was considered desirable that the voters of the State as a whole pass on those judges whose decisions will make law for the State as a whole.

Section 5.10. Retirement of Judges.

Each judge shall retire at the age of 70. The chief justice of The Supreme Court, with the approval of a majority of the members of that court, may authorize retired judges temporarily to perform judicial duties in any court.

COMMENT:

This section covers compulsory retirement and the use of retired judges.

The present Constitution requires retirement at age 70 (Article 4, section 3). Compulsory retirement has been criticized by some as automatically depriving the State of the services of highly qualified men who in particular instances are widely considered to be fully capable of continued valuable judicial service. The present Constitution does not provide for any service, even on a selective basis, by judges who have retired.

Opponents of continued judicial service after retirement generally contend that there should be a point in time when the present judges should step aside and make way for younger men to take office. They assert that there is a tendency on the part of judges after long service to become set in their ways and to resist trends toward modernization in judicial administration, in trial techniques or in the evolution of the law itself. They object to the use of retired judges even on a selected basis for special cases because they assert that the chief justice will not be willing to tell a former colleague, who may be urging that he be appointed for limited service, that he is no longer qualified to try and decide cases.

The Commission's recommendation is believed to represent a compromise between these two positions. The mandatory retirement is retained. However, power is provided for the use of retired judges on a selective and individual basis. The power is

exercisable only with the approval of the majority of The Supreme Court. This provision is designed to insulate the chief justice from the problems based on personal relations which are advanced in opposition to selected use of retired judges.

Even though the chief justice has broad power to assign judges throughout the unified system, the Commission believes that the power to use retired judges may be a useful tool in judicial administration to help relieve temporary court congestion without the necessity of creating additional judgeships.

The Maryland State Bar Association, by a relatively close vote, has recommended the use of retired judges only to sit as appellate judges. The Commission rejected a similarly limited proposal by vote of 13-9.

Section 5.11. Compensation of Judges.

Each judge shall be compensated for his judicial service solely by the State. The salary of a judge shall not be reduced during his continuance in office. Any provision for the payment of a pension to a retired judge or his surviving spouse, in effect during his continuance in office, shall not be reduced. The same compensation, including any pension based upon length of service, shall be paid to all judges of the same court, except that a uniform reduction in compensation of judges of the same court may be made applicable to all judges thereof appointed after the effective date of the reduction.

No judge during his continuance in office shall engage in the practice of law, run for elective office other than the judicial office he then holds, or make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign, or receive, except as provided herein, any remuneration for his judicial service. No retired judge while engaging in such activities shall be paid any pension for his judicial service.

COMMENT:

The foregoing provisions are self-explanatory and are designed to bring about both independence and impartiality of the judiciary. The section embodies the near unanimous recommendation of all interested persons that the practice of supplementation of judicial salaries by local subdivisions be prohibited.

Section 5.12. Removal of Judges.

The Supreme Court shall have power to remove any judge from office upon a finding, after hearing, of misconduct in office or persistent failure to perform the duties of his office, or to retire any judge upon a finding, after hearing, of disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent character. A justice shall not sit in any hearing involving his own removal or retirement. Implementation and enforcement

of this section may be by rule or order of The Supreme Court exclusively. A judge retired under this section shall have the rights and privileges provided by law. A judge removed under this section, and his surviving spouse, shall have the rights and privileges accruing from his judicial service only to the extent provided by the order of removal.

COMMENT:

A constitutional amendment adopted in 1966 creates a Commission on Judicial Disabilities which reviews these problems, and which makes recommendations for removal or retirement to the General Assembly. (Article 4, sections 4A, 4B.) A two-thirds vote of both houses is required. This amendment is in turn based upon a recommendation of the Maryland State Bar Association which, however, had proposed placing the power of removal in the Court of Appeals.

The instant section vests power in The Supreme Court to provide by rule or order for its implementation and enforcement. It is intended that The Supreme Court could adopt rules establishing a commission of mixed lay, lawyer and judicial composition for the purpose of reviewing complaints against judges and for recommending further formal proceedings if justified by the evidence. It is also intended that The Supreme Court be able to grant immunity to witnesses and compel the attendance of witnesses and the production of evidence.

The Commission's proposal concerning the effect of an order for removal gives flexibility to The Supreme Court to determine

to what extent, if at all, any accrued pension should be paid to the judge, or to his spouse. The present constitutional provision requires an absolute termination of any retirement benefits on removal. The Commission considered that this automatic forfeiture may be too harsh in a given case, particularly as to the spouse, and recommends that the matter be left to the discretion of The Supreme Court on a case-by-case basis.

Section 5.13. Clerks of Court.

The chief justice of The Supreme Court and the chief judges of the Appellate, Superior and District courts shall each appoint a chief clerk of their respective courts who shall serve at the pleasure of the appointing judge.

There shall be a chief deputy clerk of The Superior Court in each county and of The District Court in each district. Their appointment and terms shall be governed exclusively by rule.

COMMENT:

This proposal recommends a substantial change. Clerks of the circuit courts are now elected. The clerks of the present Court of Appeals and of the Court of Special Appeals are appointed by and serve at the pleasure of the respective courts. Clerks of people's courts and those performing the functions of clerk for trial magistrates are generally appointed.

The recommendation here is based on the policy that clerks of court are an arm of the court and should be responsible to the

judiciary. An overall, statewide clerk as chief clerk is recommended for each of the uniform statewide trial courts. There will be local deputies whose selection and tenure will be determined by rule. This flexibility is necessary because the administrative organization of The Superior Court will be determined by rule and the specific districting for the divisions of The District Court will be determined by law.

Since orphans' courts are merged into The Superior Court, no express reference is made to the office of Register of Wills. The duties of that office as presently constituted would be performed as determined by rule. The Commission anticipates that these duties would be handled in a special division of The Superior Court clerk's office.

IV. SCHEDULE

One important part of the Commission's work relating to the judicial article which has not been completed is the drafting of a schedule. A schedule will make provision for the transition from the old Constitution to the new constitution. It will cover such items as the retention in office of the present full-time members of the judiciary, protection of their tenure, salaries and pensions, allotment of pending cases among the new courts, preservation of causes of action and other rights and obligations, phasing out or transfer of functions of positions which are not continued as such under the proposed constitution, the changeover from elective to appointive terms, and other related matters.

Respectfully submitted,

Committee on the Judiciary
Department





